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VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 10

MAURICE E. TRAVIS, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 16, 1959
CERTIORARI GRANTED MAY 31, 1960

SUPREME COURT OF THE UNITED STATES

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[fol. 3]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Pleas and proceedings before The Honorable William Lee Knous, Chief Judge of the United States District Court for the District of Colorado, and The Honorable Jean S. Breitenstein, Judge of the United States District Court for the District of Colorado, presiding in the following entitled cause:

UNITED STATES OF AMERICA, Plaintiff,

vs.

MAURICE E. TRAVIS, Defendant.

No. 14,266, Criminal.

INDICTMENT—Filed October 28, 1954

The grand jury charges:

On or about the 26th day of December, 1951, Maurice E Travis, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully, wilfully and knowingly make and use, and cause to be made and used, within the District of Colorado, a false writing and document, namely, an "Affidavit of a Non-communist Union Officer", (Form NLRB 1081), executed within the District of Colorado, on or about December 19, 1951, which false writing and document the said Maurice E. Travis filed and caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia, knowing the same to contain a false, fictitious and fraudulent material statement and representation, to-wit, that he, Maurice E. Travis, was not then and there a member of the Communist Party, whereas, as the said Maurice E. Travis well knew, he, Maurice E. Travis, was then and there a member of the Communist Party, in violation of Title 18, U.S.C., Section 1001.

Count Two

The grand jury further charges:

On or about the 26th day of December, 1951, Maurice E. [fol. 4] Travis, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully, wilfully and knowingly make and use, and cause to be made and used, within the District of Colorado, a false writing and document, namely, an "Affidavit of Noncommunist Union Officer", (Form NLRB 1081), executed within the District of Colorado, on or about December 19, 1951, which false writing and document the said Maurice E. Travis filed and caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia, knowing the same to contain a false, fictitious and fraudulent material statement and representation, to-wit, that he, Maurice E. Travis, was not then and there affiliated with the Communist Party, whereas, as the said Maurice E. Travis well knew, he, Maurice E. Travis, was then and there affiliated with the Communist Party, in violation of Title 18, U.S.C., Section 1001.

Count Three (Dismissed 8/10/55)

The grand jury further charges:

On or about the 26th day of December, 1951, Maurice E. Travis, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully, wilfully and knowingly make and use, and cause to be made and used, within the District of Colorado, a false writing and document, namely, an "Affidavit of Noncommunist Union Officer", (Form NLRB 1081), executed within the District of Colorado, on or about December 19, 1951, which false writing and document the said Maurice E. Travis filed and caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia, knowing the same to contain a false, fictitious and fraudulent material statement and representation, to-wit, that he, Maurice E. Travis, did not then and there support any organization that believed in or taught the overthrow of the United States Government by force, whereas, as the said Maurice E. Travis well knew, he, Maurice E.

Travis, did then and there support an organization, namely, the Communist Party, which as he Maurice E. Travis well knew, believed in and taught the overthrow of the United States Government by force, in violation of Title 18, U.S.C., Section 1001.

Count Four

The grand jury further charges:

[fol. 5] On or about the 3d day of December, 1952, Maurice E. Travis, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully, wilfully, and knowingly make and use, and cause to be made and used, within the District of Colorado, a false writing and document, namely, an "Affidavit of a Noncommunist Union Officer", (Form NLRB 1081), executed within the District of Colorado, on or about December 3, 1952, which false writing and document the said Maurice E. Travis filed and caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia, knowing the same to contain a false, fictitious and fraudulent material statement and representation, to-wit, that he, Maurice E. Travis, was not then and there a member of the Communist Party, whereas, as the said Maurice E. Travis well knew, he, Maurice E. Travis, was then and there a member of the Communist Party, in violation of Title 18, U.S.C., Section 1001.

Count Five

The grand jury further charges:

On or about the 3d day of December, 1952, Maurice E. Travis, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully, wilfully and knowingly make and use, and cause to be made and used, within the District of Colorado, a false writing and document, namely, an "Affidavit of a Noncommunist Union Officer", (Form NLRB 1081), executed within the District of Colorado, on or about December 3, 1952, which false writing and document the said Maurice E. Travis filed and caused to be filed with the National

Labor Relations Board in the City of Washington, District of Columbia, knowing the same to contain a false, fictitious and fraudulent material statement and representation, to-wit, that he, Maurice E. Travis, was not then and there affiliated with the Communist Party, whereas, as the said Maurice E. Travis well knew, he, Maurice E. Travis, was then and there affiliated with the Communist Party, in violation of Title 18, U.S.C., Section 1001.

Count Six (Dismissed 8/10/55)

The grand jury further charges:

On or about the 3d day of December, 1952, Maurice E. Travis, in a matter within the jurisdiction of the National [fol. 6] Labor Relations Board, an agency of the United States, did unlawfully, wilfully and knowingly make and use, and cause to be made and used, within the District of Colorado, a false writing and document, namely, an "Affidavit of a Noncommunist Union Officer", (Form NLRB 1081), executed within the District of Colorado, on or about December 3, 1952, which false writing and document the said Maurice E. Travis filed and caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia, knowing the same to contain a false, fictitious and fraudulent material statement and representation, to-wit, that he, Maurice E. Travis, did not then and there support any organization that believed in or taught the overthrow of the United States Government by force, whereas, as the said Maurice E. Travis well knew, he, Maurice E. Travis, did then and there support an organization, namely, the Communist Party, which as he Maurice E. Travis well knew, believed in and taught the overthrow of the United States Government by force, in violation of Title 18, U.S.C. Section 1001.

Earl C. Bartow, Foreman.

Donald E. Kelley, United States Attorney.
Filed Oct. 28, 1954.

IN UNITED STATES DISTRICT COURT

ARRAIGNMENT AND PLEA—Filed December 10, 1954

On November 3, 1954, The United States of America appeared by Donald E. Kelley, United States Attorney; and the defendant, Maurice E. Travis appeared in person and by his counsel, Samuel D. Menin and Eugene Deikman before the Honorable Jean S. Breitenstein, The United States District Judge for the District of Colorado; and the defendants made an oral motion for the continuance of arraignment and it was

Ordered that the oral motion of the defendant for continuance be denied. Thereafter the defendant waived the reading of the Indictment and entered his plea of Not Guilty as to all counts; and it was further

Ordered that the oral motion for reduction of bail bond be denied.

Entered Nov. 3, 1954.

[fol. 7]

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS INDICTMENT—Filed December 10, 1954

To The Honorable Jean S. Breitenstein, Judge Of The District Court Of The United States For The District Of Colorado:

The Defendant moves that the indictment and each count thereof be dismissed on the following grounds:

1. The Court is without jurisdiction because the indictment fails to charge that the alleged offenses were committed in the District of Colorado, and there is therefore no venue jurisdiction in this District.

2. The indictment fails to state facts constituting an offense against the United States committed in the District of Colorado.

3. The Court is without jurisdiction because the offenses, if any, are cognizable only in the District of Columbia.

4. The indictment does not state facts sufficient to constitute any offense against the United States.

5. Title 18, United States Code, Section 1001, as applied to the defendant in the indictment, and Title 29, United States Code, Section 159 (h) (pursuant to which the alleged false affidavits were allegedly executed, used and filed), on its face and as applied to the defendant in the indictment, are unconstitutional in violation of Article I, Section 9, clause 3, and the First, Fifth, Ninth, and Tenth Amendments to the Constitution.

6. As to Counts 3 and 6 of the indictment, the clause in the affidavit provided by Title 29, United States Code, Section 159 (h), to the effect that the affiant does not support any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods does not have reference to the Communist Party, but only to other organizations which so believe or teach. Even if said clause does have reference to the Communist Party, it applies only to support of the doctrine of forcible overthrow, and not to support generally or without limitation as charged in Counts Three and Six. Counts Three and Six of the indictment therefore do not [fol. 8] state facts sufficient to constitute an offense against the United States.

7. Each count in the indictment is so vague and indefinite that it fails to inform the defendant of the nature of the charge against him with sufficient exactness so that he may prepare his defense.

8. The indictment does not state the essential facts constituting the offenses charged in that it fails to allege:

a. on what date the alleged false writing and document referred to in Counts 1, 2, and 3 was filed or caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia.

b. on what date the alleged false writing and document referred to in Counts 4, 5, and 6 was filed or caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia.

c. that at the times of the alleged offenses:

(1) the defendant was an officer of a labor organization within the meaning of the Labor-Management Relations Act of 1947.

(2) any of the alleged false statements were false in fact.

(3) with respect to Counts 1 and 4, when, where, in what manner, or by virtue of what facts, the defendant was a member of the Communist Party and well knew that he was then and there a member of the Communist Party.

(4) with respect to Counts 2 and 5, when, where, in what manner, or by virtue of what facts, the defendant was affiliated with the Communist Party and well knew that he was then and there affiliated with the Communist Party.

(5) with respect to Counts 3 and 6, when, where, in what manner, or by virtue of what facts, the defendant supported the Communist Party and well knew that he then and there supported the Communist Party.

[fol. 9] (6) with respect to Counts 3 and 6, when, where, in what manner, or by virtue of what facts, the Communist Party believed in and taught the overthrow of the United States Government by force.

(7) with respect to Counts 3 and 6, when, where, in what manner, or by virtue of what facts, the defendant well knew that the Communist Party believed in and taught the overthrow of the United States Government by force.

(8) with respect to Counts 3 and 6, when, where, in what manner, or by virtue of what facts, the defendant supported the Communist Party in its belief in and the teaching of the overthrow of the United States Government by force.

9. That the Grand Jury did not have sufficient competent evidence with which to indict the defendant in that the United States sought to present evidence before the Grand Jury against the defendant after the indictment was returned.

10. In addition to the insufficiency of the evidence before it, the Grand Jury considered matters wholly incompetent

as evidence, which matters could only have been presented to the Grand Jury in the form of hearsay.

11. The Grand Jury was not selected, drawn or summoned in accordance with the law, for the reasons that:

(a) There has been a systematic exclusion by the Clerk and Jury Commissioner of Negroes, Mexicans and other racial or minority groups.

(b) There has been a systematic exclusion of manual workers and wage earners.

(c) The representation of Negroes, Mexicans, other racial or minority groups, manual workers and wage earners has been limited to token representation.

(d) The Grand Jury has been weighted (sic) in favor of and dominated by representatives of the owner-manager groups of the community.

(e) The Clerk has failed to carry out the statutory and [fol. 10] constitutional mandate to employ such methods and procedures as would insure a representation of a cross-section of the community.

12. The indictment alleges only one offense in Counts One, Two, and Three, and only one offense in Counts Four, Five, and Six, to the prejudice of the defendant. If the indictment be not dismissed on this ground, the motion to compel election, filed simultaneously with this motion, should be granted.

Nathan Witt, Samuel D. Menin, Eugene Deikman,
Attorneys for Defendant.

Filed Dec. 10, 1954.

[fol. 12]

IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION AND ORDER—March 15, 1955

Breitenstein, District Judge.

* * * * * * *

2. Venue.

Counsel for the defendant urge that venue is improperly laid in the District of Colorado and that the indictment can be maintained, if at all, only in the District of Columbia. Their contention is that Section 1001 of Title 18 applies to a "matter within the jurisdiction of any department or agency of the United States". The indictment here is predicated upon two affidavits allegedly filed with the National Labor Relations Board in Washington. The defense asserts that there was no matter within the jurisdiction of the United States until the affidavits were actually filed with [fol. 13] the Board in Washington. Hence, they say, the United States District Court for the District of Colorado has no jurisdiction.

The United States contends that 18 U.S.C. §3237 applies and that the offense was begun in Colorado and completed in Washington. Under this theory venue could be laid in either jurisdiction.

It should be noted that under the rules and regulations of the National Labor Relations Board the affidavit required by Section 159 (h) when made by officials of a national or international labor organization must be filed with the Board in Washington. Similar affidavits of officials of local labor organizations must be filed with the appropriate regional office of the Board. It is not denied that Travis is an official of an international labor organization and, hence, in his case the affidavit had to be filed in Washington.

Each count in the indictment charges that the defendant Travis did "make and use, and cause to be made and used, within the District of Colorado, a false writing and document, namely, an 'Affidavit of a Noncommunist Union Officer', (Form NLRB 1081), executed within the District of Colorado, * * * which false writing and document the said Maurice E. Travis filed and caused to be filed with the National Labor Relations Board in the City of Washington, District of Columbia".

During the argument Government counsel asserted that the affidavits were sent by mail from Denver to Washington and offered to furnish a bill of particulars as to the

mailing. This matter will be referred to later in discussion of the motion for a bill of particulars.

It is agreed that the defendant Travis is a resident of Denver, Colorado.

The basic contention of the defense is that there is no "matter within the jurisdiction of any department or agency of the United States" as required for there to be an offense under Section 1001, until the actual filing of the affidavits with the National Labor Relations Board in Washington (see United States v. Valenti, 3 Cir., 1953, 207 F. (2d) 242, 244; Hupman v. United States, 6 Cir., decided February 7, 1955—not yet reported).

[fol. 14] Section 159 (h) of 29 U.S.C. does not require the filing of an "Affidavit of Noncommunist Union Officer". It merely states that the National Labor Relations Board shall not take certain actions relating to a labor organization unless certain things, including the filing of non-Communist affidavits by the officers of the organization, are done. Obviously, for a labor union to be effective it is desirable that the union comply with Section 159 (h) so that it may avail itself of the facilities of the Board which are otherwise denied to it.

The filing by defendant Travis of the affidavits mentioned in the indictment was one step in satisfying the requirements of Section 159 (h). I am not impressed with the argument that certain other documents must be filed before the jurisdiction of the Board attaches. The failure of a union to do all things necessary under Section 159 (h) does not relieve a union officer from responsibility for a false affidavit.

The statute does not command, and the Board does not require a union officer to file a non-Communist affidavit. But if a union officer chooses to file such an affidavit, then that affidavit becomes a matter within the jurisdiction of an agency of the United States.

The question boils down to whether a prosecution under Section 1001 for making a false affidavit relating to a matter under Section 159 (h) can be brought only in the jurisdiction within which the affidavit is filed or whether under the continuing offense statute (18 U.S.C. §3237) it can also be brought in the jurisdiction where the affidavit was made, executed, and mailed.

The defense places primary reliance on the Third Circuit decision in Valenti, supra. In that case the indictment was laid under Section 1001 for filing a false non-Communist affidavit. The venue question was raised at trial in a motion for judgment of acquittal. The facts adduced were thus summarized in the concurring opinion (207 F. (2d) 246-247):

"Only the execution of the affidavit is shown to have occurred in New Jersey. There was no proof whether the defendant, who was the business agent of the union, mailed the affidavit in that district, or left it at the union office in Camden for transmission to the Board, or personally [fol. 15] delivered it to the regional office of the Board just across the river in Philadelphia. On the evidence, a choice of either of the first two alternatives, which would show venue in New Jersey, rather than the third, which would not, could have been achieved only by speculation. Hence the government failed to establish venue in the District of New Jersey * * *."

The majority of the Court in the Valenti case held (207 F. (2d) 244) that the false statement was not a matter within the jurisdiction of the Board "until the affidavit through its filing has become the basis for action by the Board", and, as the affidavit was required to be filed in Philadelphia, venue was not properly laid in New Jersey. It is significant that in Valenti there was no proof of mailing in the jurisdiction in which the trial was had.

Defense counsel present in support of their argument certain cases cited in Valenti. Reass v. United States, 4 Cir., 1938, 99 F. (2d) 752, was a prosecution in West Virginia for making a false statement to a Federal Home Loan Bank located in Pennsylvania. The evidence showed that the papers were prepared in Wheeling and taken by defendant in person to the office of the bank in Pittsburgh where the execution of the papers was completed and they were presented to the bank. The Court held that the crime occurred in Pittsburgh "where the writing previously prepared was presented to the bank" but significantly added (99 F. (2d) 755):

"We have no occasion in this case to consider whether the offense would have been cognizable in West Virginia, if the defendant had entrusted the application to the mails in Wheeling for delivery to the bank in Pittsburgh, for, as the evidence shows, he took the application in person to Pittsburgh and presented it to the bank."

In United States v. Borow, D. C. N. Jer., 1951, 101 F. Supp. 211, the indictment charged the making of false representations in a matter within the jurisdiction of the War Assets Administration. A stipulation disclosed that the documents were prepared in New Jersey and delivered by the defendant in person at the office of the War Assets Administration in New York. The Court held that venue was not properly laid in New Jersey and quoted at length from Reass, supra. The Court then, referring to Reass, said (101 F. Supp. 215):

[fol. 16] "It should be noted that the court expressed no opinion on what the situation might have been had the defendant mailed the false statement in West Virginia and I make a similar reservation in the instant matter."

Thus it is clear that Valenti Reass, and Borow are based on facts different from those existing in the case at bar. None of those decisions involves a situation where the false affidavit was made, executed, and mailed in one jurisdiction for filing with a governmental agency in another jurisdiction.

The Government contention is that the making, execution, and mailing of the Travis affidavits in Denver brings into operation the continuing offense statute and, hence, prosecution may be had either in Colorado or in the District of Columbia. The pertinent statute reads thus (18 U.S.C. §3237):

"Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, or transportation in interstate or foreign commerce, is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce or mail matter moves."

In my opinion the statute applies and prosecution can be had in either Colorado or the District of Columbia.

The making and execution of the affidavits in Colorado are undoubtedly preparation as in the Reass and Borow cases but the act of mailing is the beginning of the criminal offense. It effectively begins the criminal conduct just as does the pulling of the trigger of the gun or the mailing of poison in one jurisdiction to kill a person in another (cf. concurring opinion of Judge Hastie in Valenti, supra).

The act of mailing begins the offense in Colorado. The subsequent filing completes the offense in the District of Columbia. The mailing sets in motion the events which culminate in the commission of the offenses charged. The [fol. 17] commission of those offenses must necessarily be viewed in retrospect. The act of mailing is conduct of such a nature that the crime it is designed to effect will be committed if not extrinsically prevented. Here, according to the allegations of the indictment, the crime was committed. Speculation as to what the situation would be if the letters were lost in transit is beyond the point.

I am supported in my conclusion by the recent Fifth Circuit decision in DeRosier v. United States (decided January 18, 1955, Advance Sheets 218 F. (2d) 420). There, an indictment in Florida charged a violation of Section 1001 by the making of a false statement to the Loyalty Board in Washington. The statement was written, sworn to, and "sent" in Florida. The Circuit Court said (218 F. (2d) 423):

"Whether the letter was mailed or sent by some other agency, it is implicit in the verdict of the jury that, in addition to the signing and swearing to a false statement, the appellant put the false documents out of his possession and into some agency's custody for transmission to the Loyalty Board at Washington, D.C., all of which was done

by him in the Southern District of Florida. Consequently, the offense was begun in that district, and it became indictable either at the place of its beginning or at the place of its completion. In the Valenti case there was no proof of whether the false statement was mailed in the forum district or personally delivered in the filing district."

As I read United States v. Lombardo, 241 U.S. 73, 1916, it is not contrary to my conclusions. There the indictment in the State of Washington charged a failure to file a statement with the Commissioner General of Immigration in Washington, D.C. It was held that the case had to be prosecuted in the District of Columbia. In that case the crime was one of omission. To me it is clear that a prosecution for failure to file may only be brought in the jurisdiction where the filing must be made. In the case at bar the charge is of an affirmative act which began in Colorado and was completed in the District of Columbia.

My conclusion is also supported by the decision in United States v. Johnson, 323 U.S. 273, 1944. That involved an indictment under the Dentures Act. In holding that a prose- [fol. 18] cution of the sender must be brought in the state of the sending and cannot be brought in the state of the delivery the Court referred to the provisions of Article III, Section 2, Clause 3 and of the Sixth Amendment of the Federal Constitution, which require prosecution in the state and district in which the crime was committed, and said (323 U.S. 276):

"Questions of venue in criminal cases, therefore, are not merely matters of formal legal procedure. They raise deep issues of public policy in the light of which legislation must be construed. If an enactment of Congress equally permits the underlying spirit of the constitutional concern for trial in the vicinage to be respected rather than to be disrespected, construction should go in the direction of the constitutional policy even though not commanded by it."

The defendant Travis lives in Denver, Colorado. A trial in this jurisdiction will be in the vicinage and will comport with the end sought to be attained by the Federal Constitution.

If in the case at bar the Government can sustain the burden of showing by evidence that the affidavits referred to in the indictment were made, executed, and mailed in Colorado, then in my opinion the offense began in Colorado and this Court has jurisdiction under Section 3237. The question of whether the evidence shows such facts is for consideration at the trial.

* * * * * * *

It Is Ordered that:

1. The motion to dismiss is denied.

2. The United States is required to furnish a bill of particulars as to the following matters:

(a) The dates of the mailing in Denver and of the filing in Washington of the affidavits mentioned in the indictment.

(b) The overt acts which constitute support of the Communist Party as charged in Counts 3 and 6 of the indictment.

3. Except as noted in 2 above, the motion for bill of particulars is denied.

[fol. 19] Dated at Denver, Colorado, this 15th day of March, A.D. 1955.

Jean S. Breitenstein, District Judge.

Entered on the docket March 15, 1955.

IN UNITED STATES DISTRICT COURT

ORDER—August 10, 1955

Upon oral motion of the United States made this 10th day of August, 1955, and the Court being fully advised in the premises,

It Is Hereby Ordered that Counts Three and Six, of the Indictment herein, be and the same are hereby dismissed.

Dated this 10 day of August, 1955.

Jean S. Breitenstein, United States District Judge.

Entered on the docket Aug. 10, 1955.

IN UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MANDATE

United States Of America, ss:

The President Of The United States Of America To The Honorable The Judges Of The United States District Court For The District Of Colorado. Greeting:

Whereas, lately in the United States District Court for the District of Colorado, before you, or some of you in a cause between The United States of America, Plaintiff; and Maurice E. Travis, Defendant, No. 14,266, Criminal, the judgment and sentence of the said district court in said cause, entered on February 15, 1956, was in the following words, viz:

On this 15th day of February, 1956, came the attorneys for the government and the defendant appeared in person and by Nathan Witt and Eugene Deikman, his counsel,

[fol. 20] It is adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of making a false statement in a matter within the jurisdiction of a Department of the United States, in violation of 18 U.S.C., Section 1001, as charged in Counts Nos. 1, 2, 4 and 5 of the Indictment herein, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years upon Count One of the Indictment, from and after this

15th day of February, 1956, and that the defendant pay to the United States of America a fine of $2000.00 upon Count One of the Indictment herein, and that the defendant shall stand committed to a common jail until payment of said fine or until he is otherwise discharged, as provided by law.

It is further adjudged by the Court that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years upon Count Two of the Indictment herein; it is further adjudged by the Court that the term of imprisonment hereby imposed upon Count Two of the Indictment herein shall run concurrently with the term of imprisonment imposed upon the defendant on Count One of the Indictment herein, and that the defendant shall pay to the United States of America a fine of $2,000.00 upon Count Two of the Indictment herein, and that the defendant shall stand committed to a common jail until payment of said fine or until he is otherwise discharged, as provided by law.

It is further adjudged by the Court that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years upon Count Four of the Indictment herein; it is further adjudged by the Court that the term of imprisonment hereby imposed upon Count Four of the Indictment herein shall run consecutively with the term of imprisonment imposed upon the defendant on Count One of the Indictment herein, and that the defendant shall [fol. 21] pay to the United States of America a fine of $2000.00 upon Count Four of the Indictment herein and that the defendant shall stand committed to a common jail until payment of said fine or until he is otherwise discharged, as provided by law.

It is further adjudged by the Court that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years upon Count Five of the Indictment herein; it is further adjudged by the Court that the term of imprisonment hereby imposed upon Count Five of the Indictment herein shall run concurrently with the term of imprisonment imposed upon the defendant on Count Four

of the Indictment herein, and that the defendant shall pay to the United States of America a fine of $2,000.00 upon Count Five of the Indictment herein, and that the defendant shall stand committed to a common jail until payment of said fine or until he is otherwise discharged, as provided by law.

It is further adjudged that Counts Three and Six of the Indictment herein, be and the same hereby are dismissed.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals, Tenth Circuit, by virtue of an appeal by Maurice E. Travis agreeably to the act of Congress, in such case made and provided, fully and at large appears:

And Whereas, at the May Term, in the year of our Lord one thousand nine hundred and fifty-seven, the said cause came on to be heard before the said United States Court of Appeals, on the transcript of the record from the said district court and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court for a new trial.

—July 15, 1957.

[fol. 22] You, therefore, are hereby commanded that such further proceedings be had in said cause, in accordance with the opinion and judgment as according to right and justice, and the laws of the United States, ought to be had.

Witness, the Honorable Earl Warren, Chief Justice of the United States, the 3rd day of September, in the year of our Lord one thousand nine hundred and fifty-seven.

Robert B. Cartwright, Clerk of the United States Court of Appeals, Tenth Circuit.

Filed Sept. 4, 1957.

IN UNITED STATES DISTRICT COURT

ORDER—November 1, 1957

This matter coming on for hearing on the request of the defendant for leave to file pre-trial motions, the defendant being represented by his attorneys, Eugene Deikman and Nathan Witt, and the plaintiff being represented by Donald E. Kelley, United States Attorney for the District of Colorado, and the Court being fully advised in the premises,

It Is Hereby Ordered that the defendant shall have until November 27, 1957, to file any motions not filed prior to the original trial of this cause.

It Is Further Ordered that all motions filed and orders entered thereon prior to the first trial shall stand and remain as part of the record as though similarly refiled and reordered prior to the retrial.

Dated this 1 day of November, 1957.

William Lee Knous, Chief Judge, United States District Court.

Entered Nov. 1, 1957.

[fol. 23]

IN UNITED STATES DISTRICT COURT

LETTER

Eugene Deikman
Attorney At Law
Suite 600 Mile High Center
Denver 2, Colorado
TA. 5-5405

January 10, 1958

Donald E. Kelley, Esq. United States Attorney, Post Office Building, Denver 2, Colorado

Dear Mr. Kelley: Re: U. S. vs. Travis. We hereby renew the offer to stipulate, made to you by Mr. Witt over the telephone on December 12, 1957, that the defendant, Maurice E. Travis, was a member of the Communist Party

during the period before August, 1949. More specifically, we offer to stipulate that the defendant, Maurice E. Travis, was a member of the Communist Party from 1941 to August, 1949, without prejudice to the right of the prosecution to attempt to prove that he was a member of or affiliated with the Communist Party in December, 1951, and December, 1952, or about such times.

Eugene Deikman, Nathan Witt, Attorneys for the Defendant, Maurice E. Travis.

ED/jeh

[fol. 24]

IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT AND, IN THE ALTERNATIVE, FOR A NEW TRIAL, AND FOR AN ORDER ARRESTING JUDGMENT—Filed February 11, 1958

Pursuant to Rules 29 (b) and 33 of the Federal Rules of Criminal Procedure, defendant moves for judgment of acquittal notwithstanding the verdict and, in the alternative, for a new trial, and, pursuant to Rule 34 of said Rules, [fol. 25] for an order arresting judgment, on the following grounds:

I. The Court was without jurisdiction because the indictment on its face discloses that the alleged offenses were not committed in the District of Colorado and there was therefore no venue jurisdiction in this District.

II. The Court erred in its denial of the motion to dismiss, made orally on January 28, 1958, during the course of the trial, on the ground that the oath given all the witnesses before the Grand Jury was illegal, improper, and of no effect in that it included an oath of secrecy in violation of Rule 6 (e) of the Federal Rules of Criminal Procedure and that, therefore, there was no sworn testimony before the Grand Jury as required by law.

III. In its order dated March 15, 1955, granting the motion for a bill of particulars in certain respects, the Court erred in denying the motion in all other respects.

IV. The Court erred in denying the motion addressed to the indictment to compel election between Counts 1 and 2 and between Counts 4 and 5, in denying the similar motion made at the close of the evidence, and in overruling defendant's objection, before the jury was discharged, to the verdict.

V. The evidence was insufficient in that there was no evidence whatsoever of materiality, an essential element of the offenses charged.

VI. The Court erred in rulings on objections to the admission and exclusion of evidence and in refusing to strike evidence, and various such rulings violated the First, Fifth, or Sixth Amendment to the Constitution and denied defendant a fair trial.

VII. The Court erred in denying the motions for a mistrial, and in refusing to strike evidence, as follows:

a) improper, irrelevant, prejudicial, inflammatory, and confusing testimony by the prosecution witnesses;

b) perjurious testimony by the prosecution witness, Kenneth Eckert, relating to one of counsel for defendant and by the prosecution witnesses, Kenneth Eckert and William [fol. 26] Mason, relating to the use of defendant of the word "church" as meaning the Communist Party, matters which counsel for the prosecution admittedly discussed with said witnesses before they took the stand; and

c) the erroneous, misleading, and deliberately prejudicial reference in the prosecution's argument to the jury to the discharge in 1946 of the "right wing" counsel for the International Union of Mine, Mill and Smelter Workers.

VIII. The evidence which went to the jury was further tainted in that the third prosecution witness, Fred Gardner, acknowledged on cross-examination that the testimony he gave under oath before the Senate Internal Security Sub-Committee in Cleveland in April, 1952, was knowingly, willfully, and deliberately perjurious.

IX. The Court erred in denying defendant's other motions for mistrial.

X. Section 3500 of Title 18, U.S.C., is unconstitutional on its face and as applied by the Court during the course of the trial. Even if otherwise constitutional, the respective rulings of the Court with respect to its application violated its meaning, intent, and purpose.

XI. The Court erred in its charge to the jury and in refusing to charge as requested by defendant.

February 11, 1958.

Respectfully submitted,

Nathan Witt (ED), Eugene Deikman, Attorneys for Defendant.

Filed Feb. 11, 1958.

[fol. 27]

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL AND FOR ORDER ARRESTING JUDGMENT—Entered March 18, 1958

Heretofore the defendant above named, through his counsel, requested permission to submit defendant's "Motion for Judgment of Acquittal notwithstanding the Verdict and, in the Alternative, for a New Trial, and for an Order Arresting Judgment" filed February 11, 1958, without argument. The plaintiff, through the United States Attorney, acquiesced in this request which the Court then approved.

The Court now having examined the files, records, and transcripts in said case, and being fully advised in the premises, it is

Ordered And Adjudged that the said Motion for Judgment of Acquittal, for a New Trial, and for an Order Arresting Judgment be, and the same is hereby denied. It is further

Ordered And Adjudged that this matter be set down for the pronouncement of sentence at 9:30 o'clock a.m., on March 28, 1958, at which time defendant, who is at liberty on bail, shall be present.

[fol. 28] Dated at Denver, Colorado, this eighteenth day of March, A. D. 1958.

William Lee Knous, Chief Judge.

Entered March 18, 1958.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT—March 28, 1958

On this 28th day of March, 1958 came the attorney for the government and the defendant appeared in person and by Eugene Deikman, his counsel;

It Is Adjudged that the defendant has been convicted upon his plea of not guilty as to each of Counts 1, 2, 4 and 5 of the offense of making a false statement in a matter within the jurisdiction of a Department of the United States, in violation of 18 USC 1001, as charged in the Indictment herein and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years from this date upon each of Counts 1 and 2 of the Indictment herein, said terms of imprisonment to run concurrently.

It is further adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years upon Count 4 of the Indictment herein, said term of imprisonment to run consecutively with the

terms of imprisonment imposed upon each of said Counts 1 and 2 of the Indictment herein.

It is further adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years upon Count 5 of the Indictment herein, said term of imprisonment to run concurrently with the term of imprisonment imposed upon said Count 4 of the Indictment herein.

[fol. 29] It is further adjudged that the defendant shall pay to the United States of America a fine of $2,000.00 upon each of said Counts 1 and 4 of the Indictment herein, for a total fine of $4,000.00, and that the defendant shall stand committed to a common jail until payment of said fine, or until he is otherwise discharged as provided by law.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

William Lee Knous, Chief, United States District Judge.

Entered March 28, 1958.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed March 28, 1958

Maurice E. Travis, the appellant, resides at 3117 Ohio Street, Richmond, California.

His attorneys are Nathan Witt, address: P. O. Box 156, New York 23, New York; and Eugene Deikman, address: 600 Mile High Center, Denver 2, Colorado.

The appellant was charged by an indictment containing six counts, the third and sixth counts of which were dismissed by the United States District Court upon motion by the United States District Attorney. The remaining four counts of said indictment charged that the appellant had violated Title 18, United States Code, Section 1001, Count

One charging that in an "Affidavit of a Noncommunist Union Officer" made on or about December 19, 1951, within the District of Colorado and filed with the National Labor Relations Board in the District of Columbia, the appellant falsely swore that he was not a member of the Communist Party. Count Two charged that in the same affidavit he falsely swore that he was not affiliated with the Communist Party. Count Four charged that on or about December 3, 1952, he falsely swore in a similarly made and filed affidavit that he was not a member of the Communist Party, and Count Five charged that in the same affidavit he falsely swore that he was not affiliated with the Communist Party. [fol. 30] On February 5, 1958, the appellant was found guilty on all four counts above stated in a jury trial. The appellant filed a "Motion for Judgment of Acquittal notwithstanding the Verdict and, in the Alternative, for a New Trial, and for an Order Arresting Judgment" within the time required by law, which motion was denied by the District Court on March 18, 1958, a copy of the written order received in appellant's attorney's office on March 19, 1958 by mail. On March 28, 1958, a judgment of conviction was entered, and a sentence imposed as follows:

On Count One, four years and a fine of Two Thousand Dollars; on Count Two, four years, the sentence to run concurrently with that of Count One; on Count Four, four years and a fine of Two Thousand Dollars, the sentence to run consecutively with the sentence imposed on Counts One and Two; and on Count Five, four years, the sentence to run concurrently with that of Count Four. The total sentence was eight years' imprisonment and the total fine was Four Thousand Dollars.

The appellant is in the custody of the Attorney General of the United States, pending perfecting his appeal and the giving of an enlargement bond.

The appellant, Maurice E. Travis, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the above-stated judgment and sentence.

Dated: March 28, 1958.

Attorneys for Appellant: Nathan Witt (ED), Eugene Deikman.

Filed March 28, 1958.

IN UNITED STATES DISTRICT COURT

Transcript of Trial Proceedings

Proceedings had before Honorable William Lee Knous, Chief Judge, United States District Court, and a jury, in Denver, Colorado, at the Post Office Building, in Courtroom [fol. 31] A, on January 13, 1958, at 9:30 o'clock, a.m.

APPEARANCES: Honorable Donald E. Kelley, United States Attorney, District of Colorado; Robert A. Crandall, Esq., Attorney, Department of Justice; and Paul C. Vincent, Esq. Attorney, Department of Justice; appearing for the Government. Nathan Witt, Esq., and Eugene Deikman, Esq., Attorneys, appearing for the Defendant.

* * * * * * *

[fol. 42] KENNETH ECKERT, a witness called on behalf of the Government, testified:

Direct examination.

By Mr. Kelley:

Q. Will you state your name, please?
A. Kenneth Eckert.
Q. Where do you reside, Mr. Eckert?
A. Grosse Pointe, Michigan.
Q. And do you have a family?
A. Yes.
Q. And by whom are you employed?
A. The United Automobile Workers Union.
Q. What is your position with that union?
A. I am Assistant Director of the Die Casting Division, Department, rather.
Q. Die Casting Department?
A. Yes.

(Documents marked Government's Exhibits Nos. 1 to 6, inclusive, for identification.)

Mr. Kelley: Now, if the Court please, counsel for the parties have agreed as to certain facts in connection with Exhibits 1 to 6. In the first place, we are going to use the same numbers that were used in the prior trial on the exhibits so that it will not be necessary to remark them. We also used photostatic copies. However, we have the originals to introduce and then substitute the copies as we did previously. Also, in connection with these Exhibits 1 to 6 the facts which I am about to stipulate in reference to are as far as the stipulation goes, what I mean to say, counsel for both sides reserve any arguments of a legal nature pertaining to the exhibits. Have I correctly stated it?

The Court: What is the stipulation? What is the agreement?

Mr. Kelley: What I have said so far is our agreement up to this point I think.

Mr. Witt: Mr. Kelley has stated it correctly.

[fol. 43] The Court: I do not know what the agreement is.

Mr. Kelley: Well, that—

The Court: That they be admitted in evidence or what?

Mr. Kelley: Yes, that they be admitted in evidence, that Exhibits 1 to 6 shall be received in evidence. We first stipulate that it is not necessary to call a witness to lay foundations.

The Court: If you have stipulated they will be received in evidence, that is all there is to it. Is that what the fact is, Mr. Witt?

Mr. Witt: That is what the fact is if the Court please.

Mr. Kelley: There are some other things, your Honor. I was trying to get to it. The reason I prefaced my remarks was because of an occurrence at the last trial. Now, I will take each exhibit and proceed with our stipulation as to each exhibit.

The Court: All right.

As to Exhibit No. 1, it is stipulated that the signature M. E. Travis appearing thereon is the signature of Maurice E. Travis, the defendant in this case. It is further stipulated

that Exhibit 1 was notarized on December 19, 1951, that it was mailed or caused to be mailed by the defendant on December 21, 1951 to the National Labor Relations Board, Washington, D.C., that it was received by the National Labor Relations Board and filed on December 28th 1951.

As to Exhibit No. 2, it is stipulated that Exhibit No. 2 is the cover letter for Exhibit No. 1, and that it accompanied Exhibit No. 1.

As to Government's Exhibit No. 3, it is stipulated that it is a carbon copy of a letter acknowledging receipt of Exhibits 1 and 2 by the National Labor Relations Board and was received by the International Union of Mine, Mill & Smelter Workers here in Denver.

As to Exhibit No. 4, it is stipulated that the signature [fol. 44] M. E. Travis appearing thereon is the signature of the defendant, Maurice E. Travis, that it was notarized on December 3rd 1952 in the City and County of Denver, that Exhibit No. 4 was mailed or caused to be mailed by Maurice E. Travis to the National Labor Relations Board on December 3rd, 1952, and that it was received by the National Labor Relations Board and filed there on December 4, 1952, and that Exhibit No. 5 is a cover letter relating to Exhibit No. 4 and that it was mailed and received at the same time as Exhibit No. 4 by the National Labor Relations Board.

As to Government's Exhibit No. 6 it is stipulated that it is a copy of the letter written by the National Labor Relations Board on December 8, 1952 to the International Union of Mine, Mill & Smelter Workers, acknowledging receipt of Exhibits 4 and 5. It is further stipulated that all said exhibits shall be received in evidence, and copies be substituted therefor.

Mr. Witt: Your Honor, I could easily be mistaken, but if I followed Mr. Kelley correctly despite the fact that he said he would try to use the same exhibit numbers, I think he gave them in a slightly different order. Perhaps we should check that so there will be no confusion in the record.

The Court: We wish to keep the record straight, Mr. Kelley, and of course I am not familiar with the exhibits. What do you have to say about Mr. Witt's suggestion?

Mr. Kelley: I don't think I made a mistake. He thinks I gave the wrong numbers, describe the wrong numbers on them.

Mr. Witt: If you will give me a moment to check, Your Honor.

The Court: You might check because we wish to keep the record straight.

Mr. Kelley: I am just as interested as he is, Your Honor.

Mr. Witt: My impression was incorrect, Your Honor. Mr. Kelley used the same exhibit numbers.

The Court: Then it is correct the way it stands?

[fol. 45] Mr. Witt: Yes.

The Court: Very well; does the Government wish to move for the admission of these exhibits now?

OFFERS IN EVIDENCE

Mr. Kelley: I did, Your Honor, I will renew the offer.

The Court: You said it was stipulated they might be admitted in evidence.

Mr. Kelley: I move that they be admitted in evidence.

The Court: And I gather there is no objection?

Mr. Witt: No objection.

The Court: So those exhibits which are numbered from 1 to 6 inclusive, as I understand it, will be admitted in evidence, is that right?

Mr. Kelley: That's right.

(Government's Exhibits 1 through 6, inclusive, were received in evidence.)

Mr. Witt: As Mr. Kelley said, Your Honor, and this is important to us, especially from the point of view of the venue issue, of course, that we stipulate only to these documents, to the fact of these documents and not to any legal conclusions or legal effect.

The Court: That they are admitted in evidence, and of course whatever inferences or conclusions there are will be a question for the jury.

Mr. Kelley: It is further stipulated that the International Union of Mine, Mill & Smelter Workers filed with the National Labor Relations Board and the Department of Labor all other documents required by law for compliance with Sections 9 (f, g and h) of the Labor-Management Relations Act of 1947.

Mr. Witt: So stipulated.

The Court: Very well.

[fol. 46] Mr. Kelley: It is further stipulated that the making and filing of an affidavit of the non-Communist officer is a matter within the jurisdiction of the National Labor Relations Board and that the National Labor Relations Board is an agency of the United States.

Mr. Witt: So stipulated.

The Court: Very well.

Mr. Kelley: Now, if it please the Court, I would like to read from the exhibits.

The Court: Very well, you may do so.

Mr. Kelley: Exhibit No. 1, "United States of America, National Labor Relations Board, Affidavit of non-Communist Officer. The undersigned, being duly sworn deposes and says, one, I am a responsible of the union named below; two, I am not a member of the Communist Party or affiliated with such party."

Now, as to three, Your Honor, I am going to ask that three be blocked out on the photostat for the reason that it might be within Counts 3 and 6 which have been dismissed, and I presume counsel would agree to that.

Mr. Witt: We have no objection.

The Court: Very well then; I understand you wish to withdraw these and substitute photostatic copies and then in the photostat omit some matter in this Exhibit 3?

Mr. Kelley: Yes, that's right.

The Court: Very well.

Mr. Kelley: "Full name of union including local name and number, International Union of Mine, Mill & Smelter Workers, signature, M. E. Travis, 412 Tabor Building, Denver, Colorado, subscribed and sworn to before me this 19th day of December, 1951," a notary public. The name of the notary is there; I don't think it is necessary to read that to you.

[fol. 47] Now, the part of the exhibit I have just read is known as Form NLRB 1081, and then the other part of the exhibit is Form NLRB 1080, and is certificate of union officers. The titles of all the officers and the names of all officers of the union and the date of the expiration of the term of each officer are as follows: "Title of Office, President, John Clark; expiration date"—on all of them it is December 31, 1953.

"Vice-President, Orville Larson; Vice-President, Charles H. Wilson; Secretary-Treasurer, M. E. Travis; Board Member, District 1, William Mason; District 2, C. D. Smotherman; District 3, Raymond Dennis; District 4, vacant; District 5, Alton Lawrence; District 6, Albert Pezzati; District 7, Chase J. Powers; District 8, Nels Phebol.

"I am an official of the union; certify that this information is true to the best of my knowledge and belief, International Union of Mine, Mill & Smelter Workers, 421 Tabor Building, Denver, Colorado, date, December 15, 1951," and signed John Clark.

Mr. Witt: Excuse me, if the Court please. May I talk to Mr. Kelley a moment? It may clear something up and save time.

(Counsel confer out of the hearing of the jury and the reporter.)

Mr. Kelley: May it please the Court, apparently this Form 1080 which I have read from which listed the officers of the union and which is referred to in Exhibit 2 as having accompanied it, and is one of the papers covered by the stipulation that all other papers were filed, was not actually introduced in evidence at the last trial, and we ask to withdraw that form or detach it from our exhibit and ask that the jury be instructed to disregard the reading of that.

The Court: I don't know whether the jury can identify what you are talking about.

Mr. Kelley: I just read to them the names of the officers and stated the time when their office expired.

[fol. 48] The Court: That portion is to be disregarded by the jury and you will be permitted to physically detach from—what is the exhibit number?

Mr. Kelley: That is Exhibit No. 1.

The Court: —from Exhibit No. 1 the item you are talking about and it will not be received as an exhibit, this attached sheet. The remainder of Exhibit 1, of course, will remain in evidence.

Mr. Kelley: The same is true as to Exhibit No. 4, although I haven't reached that point yet.

The Court: You better detach the sheet and also I might say that there was some other matter you mentioned a moment ago that you didn't want to incorporate it in the exhibit. The way the record stands they have been admitted in evidence now, and, of course, the jury hasn't seen the exhibits. You have read from portions of them but there should be immediately substituted a photostatic copy for that exhibit you are talking about that has material that you do not wish to have included in it.

Mr. Kelley: We will do it before it is handed to the jury.

The Court: Very well.

Mr. Witt: Will Your Honor instruct the jury, although it is kind of confusing—

The Court: The jury will disregard this portion of the exhibit that Mr. Kelley just read about the names of the officers and expiration date of their terms. I think that's what it amounted to.

Mr. Witt: Yes, everything pertaining to what Mr. Kelley referred to as Form NLRB 1080.

Mr. Kelley: Right.

The Court: Yes.

Mr. Kelley: Exhibit No. 2. This is on the letterhead of [fol. 49] the International Union of Mine, Mill & Smelter Workers dated December 21, 1951. "Mr. Claude B. Calkin, Affidavit Compliance Officer, National Labor Relations Board, Washington 25, D.C. Dear Sir: In connection with the filing requirements of the Labor-Management Relations Act, 1947, we enclose NLRB Form 1080, certificate of union officers and Forms NLRB 1081, the notarized affidavits of our officers and executive board members. Very truly yours, John Clark, President."

Exhibit No. 3, which is a carbon copy of a letter dated January 8, 1952, addressed to Mr. John Clark, President, International Union of Mine, Mill & Smelter Workers, Suite 412, Tabor Building, 16th and Curtis, Denver 2, Colorado. "Dear Mr. Clark: This will acknowledge receipt of your letter of December 21, 1951, enclosing compliance material submitted in accordance with the filing requirements of Section 9 (f), (g) and (h) of the Labor Management Relations Act, 1947.

"The National Labor Relations Board will consider your organization in compliance with Section 9(f) and (g) of the Act until June 30, 1952, and under Section 9 (h) until December 7, 1952, provided there are no intervening changes in your officers.

"Our Regional and Sub-Regional Offices have been notified of your renewal of compliance.

"This, of course, does not cover your local organizations. Each local must separately meet the above filing requirements of the Act in order to enjoy its benefits.

"We will give you 30 days advance notice, whenever possible, of pending expiration of compliance as reflected by our records. We assume no responsibility for notification as it is your obligation to keep this material up to date. Very truly yours, Claude B. Calkin, Affidavit Compliance Officer."

Exhibit No. 4 is the affidavit, it is Form NLRB-1081. "Affidavit of NonCommunist Union Officer. The undersigned, being duly sworn, deposes and says: 1. I am a responsible officer of the union named below. 2. I am not a member of the Communist Party or affiliated with such party."

And, three, we ask to block that out on the photostat as [fol. 50] we do with Exhibit No. 1.

"International Union of Mine, Mill & Smelter Workers," signed "M. E. Travis, 3456 Decatur Street, Denver, Colorado." And it is notarized on the 3rd day of December, 1952.

Exhibit No. 5 is a letter on the letterhead of the International Union of Mine, Mill & Smelter Workers dated December 3, 1952, addressed, "National Labor Relations Board, Washington 25, D. C. Gentlemen: In accordance with the provisions of the Labor-Management Relations Act, 1947, we enclose herewith Form NLRB 1080, Certificate of Union Officers and Affidavits of Non-Communist Union Officers signed by the officers of our organization. Very truly yours, John Clark, President."

Exhibit No. 6 is a carbon copy of a letter dated December 8, 1952, addressed to Mr. John Clark, President, International Union of Mine, Mill & Smelter Workers, Suite 412,

Tabor Building, 16th and Curtis, Denver 2, Colorado. "Dear Mr. Clark: This will acknowledge receipt of your letter of December 3, 1952, enclosing material submitted in accordance with the filing requirements of Section 9 (f), (g) and (h) of the Labor Management Relations Act, 1947.

"The National Labor Relations Board will consider your organization in compliance with Section 9 (f) and (g) of the Act until June 30, 1953, and under Section 9 (h) until November 18, 1953, provided there are no intervening changes in your officers.

"Our Regional and Sub-Regional Offices have been notified of your compliance.

"This, of course, does not cover your local organizations. Each local must separately meet the above filing requirements of the Act in order to enjoy its benefits.

"We will give you 30 days advance notice, whenever possible, of pending expiration of compliance as reflected by our records. We assume no responsibility for notification as it is your obligation to keep this material up to date. Very truly yours, Robert Frazer, Affidavit Compliance Officer."

Q. Mr. Eckert, have you ever been a member of the Communist Party of the United States?

A. Yes.

Q. And about when did you become a member of the Communist Party?

[fol. 51] A. Well, sometime back about 1931 is as close as I can recall.

Q. How long did you remain a member of the Communist Party?

A. Why, I remained a member of the Communist Party until 1948. There were two intervening periods, however, that technically I suppose I was not a member of the Communist Party here.

Q. And what were those two periods?

A. Well, the first period I was out of the country for about 14 months, and the second period I was in the Army of the United States, and my membership was not active.

Q. Now, during the period of your membership in the Communist Party did you have occasion to attend any Communist Party schools?

Mr. Witt: Your Honor, we object to this, and we object to this whole line Mr. Kelley is opening up. We think we are familiar with the line although Mr. Kelley may not necessarily be following the same course as he pursued with this witness in the first trial. In any event, this is a basic objection, your Honor, which will affect not only the testimony of this witness but at least two other witnesses, so that I am sure Mr. Kelley will agree with me that at this point your Honor would probably want to hear some argument.

Mr. Kelley: Well, your Honor, I do not know whether you want to hear argument or not, but I think that we would—we understand that Mr. Witt would want a continuing objection to the type of question propounded.

The Court: What is the objection? I do not know what the objection is. What is the objection, Mr. Witt?

Mr. Witt: Your Honor, it appears already from the testimony of this witness that he left the Party in 1948. The charges in this case relate to the years 1951 and 1952, and, therefore, we object to any testimony from this witness about his own biography or about the Communist Party covering the period from 1931 to 1948 on the ground of remoteness. Secondly, your Honor, as your Honor heard me say in my opening statement, we have offered the prosecution a stipulation to the effect that the defendant was a member of the Communist Party during the period until 1949. The only relevant testimony that this witness can possibly give about Travis, and, if he were asked, he [fol. 52] would say he never spoke to Travis or had anything to do with him after 1948 after this witness says he left the Communist Party, the only testimony this witness could give would go to the period from 1931 to 1948.

Now, we offered that stipulation on this occasion, your Honor, even though we didn't on the first occasion, because we weren't then aware of what kind of a case the Government would make when we went to trial the first time, but now that we know we offer this stipulation in order to remove any possible excuse for testimony from this witness or any other witness about Travis's membership in the Communist Party before 1949.

Now, in light of our offer to stipulate we can see no possible reason for testimony from this witness about Travis covering the period from 1931 to 1948 or whenever it is except the prosecution's anxiety to inject prejudicial, inflammatory testimony into this record, and to seek to influence this Jury improperly. Furthermore—

Mr. Kelley: May it please the Court, if counsel is going to make a Jury argument—

Mr. Witt: I am not finished.

Mr. Kelley: I think we should go into Chambers if he is going to make a Jury argument.

Mr. Witt: This is not a Jury argument.

The Court: I understand his position is that there is no controversy in the case under their admissions here with respect to the situation prior to 1949. Is that what I understand?

Mr. Witt: Exactly.

Mr. Kelley: That is his position, your Honor, but—

Mr. Witt: I have several other branches to my argument I would like to conclude.

The Court: I have the basis of your objection. What is the Government's position about what makes this material? [fol. 53] Mr. Kelley: The Government's position is this: It is not for the defense to suggest to the Government how they put on their case.

The Court: The Government has to bring in relevant testimony. If it is not relevant—

Mr. Kelley: It is relevant. It is comparable to this situation: You put an expert medical individual on the stand who has great qualifications about what he testifies to, and the defense says, "We will stipulate he is qualified."

The Court: There is no analogy there at all.

Mr. Kelley: There is in my opinion.

The Court: There is a question of relevance as to time. If it is charged that a man has a certain status on a certain date, what I am trying to find out is how far back of that date you can go to show the same status. That is what it amounts to.

Mr. Kelley: We had the same issue originally in the case in the first instance except they didn't make the offer to stipulate. Now, they don't offer to stipulate everything we

put in by our witnesses. Now, the Government's, one of the rules, and there is an instruction in the case on it, relates to a state of mind or a condition which the Government shows to exist prior to the act which constitutes the crime, and we show that it exists and the extent to which it exists.

The Court: There isn't any question of state of mind in this case, is there?

Mr. Kelley: Well, whether or not he was a Communist at the time he signed his affidavit.

The Court: That is a fact.

Mr. Kelley: All right, a fact, and we have to prove that he was a Communist during the periods alleged in the indictment. Well, this is not the kind of case where you can go down to the City Hall and find out that he is registered as a Communist and prove that he was a Communist on that [fol. 54] date, and the reason we go into the prior, part of the reason we go into this prior history is to show the extent to which he adhered to the Communist Party and to show and to convince the Jury that that condition continued all during this period of the indictment period. We also use this testimony—

The Court: This is prior to the indictment period this witness is going to talk about.

Mr. Kelley: That's right, and this testimony was all admitted in the first trial. Then in addition to that, your Honor, this witness is qualified as an expert, and this is part of the background and the qualifications for his testifying as an expert.

The Court: Well, expert as to what?

Mr. Kelley: Well, first, as to the role of the Communist Party in labor unions.

The Court: Is that an issue in this case?

Mr. Kelley: Yes, sir, and it was a question that he was permitted to answer on the last trial, and as to this matter of whether or not you can resign from the Communist Party.

The Court: Well, I gather that is in issue, but I didn't know the first phase of the thing was in issue.

Mr. Kelley: Well, it was a matter which—it is an issue, yes, your Honor, because that is one of the facets of the case, is the role of the Communist Party in the trade union movement.

Mr. Witt: Will your Honor hear me?

The Court: Well, I think probably the best way to do, of course, I am not expert about what this witness intends to testify about, is that maybe it better be reached by specific objection if the question comes up, because I think some of it on the basis of what I have heard would probably be admissible. Some of the rest I have some question about, and I think maybe we had better proceed by questions and answers, and you can object when the question is made. Your objection goes to the witness testifying further. Well, there may be a half a dozen things or a dozen things or more that would be entirely relevant that I know nothing about. [fol. 55] So, I think I can judge the thing better if I hear the question and then you make your objection at that time. I do not think there is a blanket objection to his testifying.

Mr. Witt: May I say this?

The Court: Yes.

Mr. Witt: It happens, your Honor, that, if the witness were permitted now by the Court to answer the pending question, we would be in the very heart of the problem which we are addressing ourselves to. In answer to this question, unless the witness has changed his testimony from the first trial, the witness will make highly prejudicial and inflammatory statements which we think, if we are right, would entitle us to a mistrial and, we, therefore, think that your Honor should give us the opportunity to argue this point as fully as we want not only because, as I indicated before, it pertains to all of the testimony of this witness but because it pertains also to all of the testimony of two other witnesses. So, it is obvious that this issue is very basic to the course of this trial and to the legal issues involved. I have a good many things to say in answer to Mr. Kelley, and I think your Honor should hear me, because we will be in real difficulty if this man is permitted to make his speech from the witness stand.

* * * * * * *

[fol. 65] The Court: My impression after hearing all this discussion here is somewhat similar to what I said in the courtroom before we recessed. I feel, as I have said three

or four times in here, that the Government has the right to prove that Mr. Travis, or offer their evidence which they think will establish the fact that Mr. Travis was a member of the Communist Party. I think they can cover the period when he became a member, show the continuity of his membership, and culminate it by offering the evidence they have by showing that he was a member of the Communist Party at the time these affidavits were allegedly made for the purpose of establishing, as they contend, if they can so [fol. 66] establish, that the affidavits were false.

Now, it has been indicated here by both sides and the Government's statement and in Mr. Witt's opening statement to the jury that at some point along here—I am not clear as to the date—Mr. Travis filed what he designates as a resignation or took some steps that amount to a resignation, and his position is that, "While I was a member of the Communist Party," as I understand the admissions here up to that time, "then resigned and after that, and at the time I made these affidavits I was not a member of the Communist Party," and the Government has a right to offer any evidence that they have that they think would establish the fact that he was in fact a member of the Communist Party at this time, and that naturally would get into the question of whether his resignation was effective and all of those things.

Now, I am quite clear on those general principles that the Government has a right to go into those fields. I am not so clear about this expert matter at all, but the sum total of what my present thinking is that I couldn't sustain a blanket objection to this witness testifying any further. I think the blanket objection to his testimony will have to be overruled. That, of course, is without prejudice to the defendant to make specific objections as these questions arise; but, in general I think the Government has a right to proceed to establish the fact that I have mentioned.

Now, I don't know how much collateral substance there is in this or anything, and I think counsel are familiar with his testimony, and I think objections can be made on that basis, but I feel that the general motion to just say that this

witness can't offer any testimony at all has to be overruled.

. . . . . .

[fol. 73] In Open Court

KENNETH ECKERT, resumed the stand, and testified as follows:

Direct examination.

By Mr. Kelley (Continued):

Q. I believe that at the time of the interruption that I had [fol. 74] asked you if during the period of your membership in the Communist Party if you attended any schools or classes.

A. Yes.

Q. You did?

A. Yes.

Q. And will you name the schools and the periods when you attended them, please?

Mr. Witt: We object to this question, your Honor, on the ground that we have already stated on the record.

The Court: The objection will be overruled. You may proceed. I do not know what he is going to testify to. Proceed.

A. I attended the Party's classes and schools in Toledo, Ohio, Camp Robinhood, Ohio, and Moscow in the Soviet Union.

MOTION TO STRIKE AND MOTION FOR MISTRIAL AND OVERRULING THEREOF

Mr. Witt: If the Court please, we move to strike the witness's answer, and we also move for a mistrial on the ground that the injection of the witness's attendance at a school in Moscow is entirely irrelevant in this case and has the effect of inflaming the jury, confusing the issues, and denying the defendant a fair trial.

The Court: The motion will be overruled, both motions, the motion to strike and the motion for a mistrial subject to your right to renew the motion to strike, and I think, Mr.

Kelley, you had better proceed to the period showing the alleged affiliations you assert of the defendant here with the Communist Party. I think as a preliminary matter that there may be some question about this testimony, and I will permit them to renew their motion to strike. I think you had better proceed on that phase of the case.

Mr. Kelley: The Government then after the Court has resolved that question, we can come back to laying the foundation?

The Court: Yes, and how it is resolved. But at the moment I think in light of our discussion that the testimony should have reference to the membership of the defendant in the Party and those things and within the scope of this witness's knowledge. So, you may proceed on that basis, and we will give consideration to this motion to strike later on.

[fol. 75] Mr. Kelley: All right, your Honor.

Q. Are you acquainted with the defendant, Maurice E. Travis?

A. Yes.

Q. Do you see the defendant in the courtroom?

Mr. Witt: We agree that the witness has known the defendant and could identify him.

The Court: Well, he can proceed to do it. He can say whether he is in the courtroom. You can answer the question.

Mr. Kelley: I think all we wanted to do is the record to show that the witness can identify the defendant and that the Mr. Travis that he talks about in his testimony is this defendant. That is all we have in mind.

The Court: All right.

Q. When did you first become acquainted with Mr. Travis?

A. The first time that I recall meeting Mr. Travis was about 1942 as near as I can recall.

Q. And where did you meet him?

A. In Los Angeles.

Q. That is Los Angeles, California?

A. Yes.

Q. Now, at that time, Mr. Eckert, what is the fact as to whether or not you held a position with a labor union?

A. I did hold a position with a labor union.

Q. And what was that union?

A. Just about this time I was Co-ordinator of the Mine, Mill & Smelter Workers in southern California.

Mr. Witt: Your Honor, perhaps at this time the record should show that the defendant has a continuing objection to all of this witness's testimony on the ground of remoteness and on the further ground of relevancy in view of the fact that the witness has testified that he left the Communist Party in 1948.

The Court: Well, the objection may be noted.

Mr. Witt: If we have objections on other grounds, we will make them.

[fol. 76] The Court: Yes, very well. You may continue, Mr. Kelley.

Mr. Kelley: I do not know whether there is a question pending or not. Was there?

The Court: I think he answered it, but I may be mistaken.

Q. Now, Mr. Eckert, at that time were you connected with the Mine, Mill & Smelter Workers or was it the National Association of Die Casting Workers at that time?

A. Well, the National Association of Die Casting Workers was in the process of merging with the Mine, Mill & Smelter Workers, and my memory is not exact whether the first meeting was just prior to the actual merger or afterward.

Q. When you say you were Co-ordinator that was at the time you met Mr. Travis, is that correct?

A. Yes.

Q. And at this particular time were you a member of the Communist Party of the United States?

A. Yes.

Q. And do you know what position Mr. Travis held at that time?

A. Mr. Travis was the Co-ordinator of the Mine, Mill & Smelter Workers in northern California.

Q. Now, during this—how long did you remain in California approximately?

A. From that time until, well, until I went in the Army in 194—very early in 1944 I believe it was.

Q. Now, during this period while you were in California did you participate in Communist Party functions and activities?

A. Yes.

Q. Now, do you know of your own knowledge whether or not Mr. Travis was a member of the Communist Party at that time?

A. Yes.

Q. And did you or did you not in the course of your Communist Party activities come in contact with Mr. Travis?

A. Yes.

Q. During this period from 1941 or '42 when you arrived in California until you went in the Army did you have any Communist Party assignment in the National Association of Die Casting Workers and in Mine-Mill after the merger?

Mr. Witt: I am sorry, your Honor, I was waiting for the next question in order to raise a question about a prior question that Mr. Kelley asked. Mr. Kelley asked the witness whether he had anything to do—I may not be phrasing it exactly—with the defendant in connection with these Communist Party activities, and I waited to see whether [fol. 77] Mr. Kelley would follow up that answer after the witness answered "yes", but he didn't. I now move to strike that answer, and I object to the question, because it calls for a conclusion of the witness, and it doesn't give us the testimony as to facts, dates, places, incidents, and that kind of thing.

The Court: I think the objection will be overruled. I assume Mr. Kelley will go into detail in respect to what conduct there was. He is simply asking if he knew or if that happened. He didn't go into detail, or course. The objection will be overruled.

Q. Do you know of your own knowledge whether or not Mr. Travis had a Communist Party assignment during this period from 1942 until the time you went into the Army?

A. Yes.

Q. And will you tell what that was?

A. One assignment that he had that I had knowledge of was to carry on the Communist Party work inside the Mine, Mill & Smelter Workers in northern California.

Q. Now, and was this the same type of work that you were doing in the Die Casting Division or in your union activities?

A. Yes.

Q. And did the type of work you were, each of you were doing cause you to come in contact with Mr. Travis?

A. Yes, occasionally.

Q. Now, directing your attention to this period of time I will ask you whether or not you had a conversation with Mr. Travis after the merger of the National Association of Die Casting Workers and Mine-Mill in which the subject of the conversation was one Allen McNeal.

Mr. Witt: I object to the question, it is entirely too leading. Mr. Kelley has asked other leading questions, but we do not want to object continually.

The Court: In some aspects the question is leading. It might have been asked in another form. But I think counsel is doing it to save time. I see no prejudice in the form of the question. The objection will be overruled. Did he answer the question?

Q. What is the answer as to whether or not there was a conversation?

A. Yes, there was.

Q. Now, where did this conversation take place?

[fol. 78] A. It took place in Los Angeles.

Q. And do you recall whether or not there was anyone else present at that time?

A. My recollection is that the staff member, Jack Marcotti, was there. I don't recall whether anyone else was there or not.

The Court: When was this conversation? I haven't heard any date.

Mr. Kelley: I beg your pardon.

The Court: When, I say?

Mr. Kelley: It was—

The Court: I never heard the witness say anything about it.

Q. Do you recall when this conversation took place?

A. Well, the conversation took place in 1942 after we had merged the two labor organizations in California, the Die Casters and Mine-Mill.

Q. Now, can you—do you know whether or not Jack Marcotti was a member of the Communist Party at that time?

A. Yes.

Q. Will you relate the substance of the conversation that was had at that time and ascribe the remarks that were made to whoever made them? First, if you will, state what, if anything, Mr. Travis said at that time.

A. The substance of the conversation stated by Mr. Travis was there was a person in Denver by the name of Allen McNeal who was the Administrative Assistant to the President of the Mine, Mill & Smelter Workers, Mr. Robinson, and that Mr. McNeal was the ranking Communist Party official inside the Mine, Mill & Smelter Workers and that, if I received instructions from Mr. McNeal regarding Communist Party work inside the Mine, Mill & Smelter Workers, that I should accept that as authoritative instructions regarding Communist work in the Union.

Q. Now, I believe you testified, Mr. Eckert, that from early in 1944 until sometime in 1945 you were in the United States Army, is that correct?

A. That is my best recollection as to the date.

Q. Do you recall about when you got out of the Army?

A. Well, in 1945 in the fall.

[fol. 79] Q. In the fall?

A. Yes.

Q. Now, after you were discharged from the Army where did you go to take up your residence?

A. Cleveland, Ohio.

Q. And what was your occupation or your position at that time?

A. Well, my immediate status at that particular time was to renew my services on the staff of the Mine, Mill & Smelter Workers, and my recollection is that I did call the President of the Union regarding the matter, and my recollection is that he stated that I should, would resume my status that I had before I went into the Army as a staff member in the Mine, Mill & Smelter Workers.

Q. Did there come a time during this—well, strike that. Did your work again bring you in contact with Mr. Travis?

A. Yes.

Q. Now, during this period from the time you were discharged from the Army in 1945 up until sometime in 1948 did you hold any positions other than as a staff member with the Mine-Mill Union?

A. Yes.

Q. And will you state what positions those were?

A. I was Chairman of the Die Casting Division of the Union and a member of the International Executive Board.

Q. Now, directing your attention to this same period of time following the war do you recall the organization of a committee known as the "Steering Committee"?

Mr. Witt: Your Honor, we object to this question and this entire line on a different ground than the one on which we have our continuing objection. This witness is apparently prepared to testify that he knew the defendant as a member of the Communist Party from the time he first met him in California in 1942 until he, the witness, left the Communist Party in 1948. As we have already indicated, there is no dispute in this case about the defendant's having been a member of the Communist Party during that period, and the only purpose of this testimony is, again, to inject prejudice and irrelevant issues and confusion.

To illustrate, your Honor, Mr. Kelley has already asked the witness about that conversation in which the defendant referred to Allen McNeal. What possible relevance does that piece of testimony have in its bearing on whether the defendant was a member of the Communist Party in 1951 or '52 or was affiliated with the Communist Party those times especially since there is no dispute that in 1942 the defendant was a member of the Communist Party? And, in [fol. 80] addition, this testimony has the effect of seeking to indict a good many other people. The witness has already mentioned other names. The witness has already continually referred to Mine-Mill so that other people's names are being brought into this proceeding, the name of the Union is being brought into this proceeding for no relevant and proper purpose.

Mr. Kelley: Would the Court care to hear an answer to that?

The Court: The objection will be overruled. You may proceed.

Q. Mr. Eckert, I asked you if you recalled the organization of a group known as the "Steering Committee".

A. Yes.

Q. And do you recall about when that was organized?

A. Well, my best recollection is that it was organized early in 1946.

Q. Do you know—well, first, let me ask you this: What is the fact as to whether or not Maurice Travis was a member of the Steering Committee?

A. Maurice Travis was a member of the committee.

Q. And who else were members of that committee?

A. Al Skinner, Chase Powers, and myself.

Q. Now, was this an official organization of the Mine-Mill Union?

A. No, it was not.

Q. Will you state what the Steering Committee was?

A. The Steering Committee was a committee designated by the Communist Party to co-ordinate the work of the Communist Party inside the Mine, Mill & Smelter Workers.

Q. Now, did you state about when the committee was organized? Did I ask you that?

A. Yes.

Q. I missed the answer. Will you repeat it, please?

The Court: He said in 1946.

A. I said that was my best recollection, early in 1946.

Q. And where was the committee organized?

A. In Chicago, Illinois.

Q. And was there any meeting in connection with the organization of this committee?

A. Yes, there was.

Q. And where did that take place?

A. It took place in the City of Chicago. I don't recall the exact location.

Q. Do you recall who was present at the time the com-

[fol. 81] mittee was set up?

A. Well, some of the people present were John Williamson, Gil Green, Maurice Travis, Chase Powers, Al Skinner, Mr. Fred Fine, a Mr. Sanderson, Harold Sanderson were among those attending that meeting.

Q. Now, will you tell the Court and the Jury who Chase Powers was at that time?

A. International Executive Board member for the West Coast Area of the Mine, Mill & Smelter Workers.

Q. And who was Al Skinner at that time?

A. Al Skinner was Regional Director of the Mine, Mill & Smelter Workers or at least the Die Casting Division of it in Chicago.

Q. Now, I believe you mentioned the name of John Williamson. Will you state who he was at that time?

A. He was the National Trade Union Secretary of the Communist Party of the United States.

Q. And you mentioned the name of Gil Green. Who was he?

A. He was the Illinois State Secretary of the Communist Party.

Q. And Fred Fine?

A. He was the Illinois Trade Union Secretary of the Communist Party.

Q. You also mentioned a Mr. Sanderson. Can you state who he was?

A. Sanderson was Administrative Assistant to Reed Robinson, the President of Mine-Mill.

Q. What is the fact as to whether or not all of those who were present at that meeting were members of the Communist Party?

A. They were all members of the Communist Party.

Q. Now, Mr. Eckert, do you recall any statement made at that meeting by Mr. Travis?

A. Yes, I recall the substance of a statement.

Q. Will you state the substance as you recall it?

A. The substance was a statement stressing the necessity and importance of establishing some kind of a national committee of Communists inside the Mine, Mill & Smelter Workers that would be able to effectively co-ordinate the work of the Communists inside Mine-Mill and prevent in

the future some of the confusion that had resulted in the past as to Communist Party work in the Union.

Q. Now, did this committee—well, let me ask you this: How long to your knowledge did this committee continue to exist within Mine-Mill?

A. Well, the committee was in existence at the time that, well, shortly after the time before I left the Mine, Mill & Smelter Workers in 1948.

Q. So that all during the time of your connection with the Union from the date of the committee's organization [fol. 82] until the time that you left Mine-Mill the committee continued to exist?

A. Why, I have knowledge of a period shortly before I left, the last meeting of the Steering Committee before I left, which was just a short time before I left, but I have no knowledge after that meeting.

Q. Yes. That would be sometime in 1948?

A. Yes.

Q. Now, during the existence of the committee, during your knowledge of its existence what is the fact as to the frequency with which the committee met and whether it was frequent or infrequent?

Mr. Witt: We object to that as calling for a general statement of the witness. Mr. Kelley might ask him about what particular meetings there were if he wants to, but we cannot cross-examine the witness if he is permitted to answer that question.

The Court: The effect of the question is simply asking him how many meetings within his knowledge did the committee have. That is what the question is, isn't it?

Mr. Kelley: Yes.

The Court: I think the objection will be overruled.

The Witness: What is the question?

(The reporter read the last question.)

A. The committee met very frequently.

Q. Now, basing your answer—

Mr. Witt: If the Court please, we move to strike that answer because it is meaningless.

The Court: I think it will stand. I think your objection goes to the weight. There is nothing very certain about what "frequent" may mean. That may mean one thing to the witness and another thing to counsel. I think it will be a question for the Jury. The objection will be overruled, and the motion to strike will be denied.

[fol. 83] Q. Now, of the meetings—well, first, let me ask you, did you attend all of the meetings of the Steering Committee?

A. No, I think there were some meetings that I was not present.

Q. Of those in which you were in attendance can you say whether or not Mr. Travis was present at those meetings?

Mr. Witt: We object to this on the same ground, your Honor. Mr. Kelley is asking a whole series of general questions.

The Court: I think I will sustain the objection on the form of the question. Ask him how many meetings that he knows Mr. Travis attended or something of that sort.

Q. Can you estimate, Mr. Eckert, about how many meetings of the Steering Committee that you attended where Mr. Travis was present? Are you able to make an estimate?

A. I don't think I can, Mr. Kelley. There were so many meetings—

Mr. Witt: I move to strike that statement of the witness. I know from past experience this witness is in the habit of doing it when he wants to inject prejudicial testimony.

Mr. Kelley: I think that is an improper statement of counsel.

The Court: The witness had not completed his answer. Proceed to make your answer, Mr. Eckert.

Mr. Kelley: I think it should also be made clear that this witness made an honest answer to the question.

The Court: Well, the record shows, but he had not completed the answer.

Q. Did you have something further you wished to say?

A. Yes, I did, Mr. Kelley. I could only guess. I don't think I can hazard a guess as to the number of meetings.

Mr. Witt: I renew my objection to strike the witness's statement that there were so many meetings he attended that he can't remember.

[fol. 84] The Court: The objection will be overruled or will be denied, and the motion to strike will be denied.

Q. Who usually presided at the Steering Committee meetings?

A. Mr. Travis usually presided.

Q. If he didn't preside, who did preside at those meetings?

A. At some of the meetings where Gil Green or John Williamson was present or some other ranking Communist official sometimes they presided.

* * * * * * *

[fol. 95] Direct examination.

By Mr. Kelley (Continued):

Q. May it please the Court, ladies and gentlemen of the jury: Mr. Eckert, as I recall, at the time of the recess we had just covered the formation and membership of the Steering Committee. Now, I would like to ask you whether or not other persons than the members of the Steering Committee attended the meetings from time to time?

A. Yes.

[fol. 96] Q. And who would these other people be who would attend the Steering Committee meetings?

Mr. Witt: I object, Your Honor. We don't see any relevance in who these other people were.

The Court: He has gone into the attendance, and he enumerated a number of people there. This apparently goes to the question of someone who was there who were not members of the committee. I think it should be established, though, that the defendant was there at the time these other people were there, or something of that sort, to show knowledge on his part; otherwise I don't believe it would be admissible.

Mr. Kelley: Now, Your Honor, I can't see that it is too important one way or the other, except I would like to say it is in the nature of a foundation question, and we have already shown that at all of the meetings, or at most of the meetings at least—

The Court: That's different; he didn't say at all the meetings. He said generally, or something like that, Mr. Travis was present and presided. Now, whatever special occurrence took place, if you wish to emphasis that, would naturally have to be at some meeting that Mr. Travis was present so that there could be some notice imputed to him of the transaction.

Mr. Kelley: That isn't the purpose of this question at all; it is more of a foundation to show the use of the committee within the Mine-Mill, and I won't go into any particular uses until we show who attended different meetings. Of course, it will be brought out when we take each individual meeting, as far as that goes, and be covered in that manner, if counsel prefers that.

Mr. Witt: Counsel does prefer that.

The Court: I will sustain the objection to the question in its present form on the basis I have indicated, because anything is going to have to be connected with the defendant or shown that he had knowledge of it by some process. I understand you can't put all your evidence in at once, but there must be some connection shown between him and the transaction you have in mind, and this question standing alone in the light of the witness' previous state-
[fol. 97] ment might relate to a time when the defendant was not even present or an occurrence of which he had no knowledge.

Mr. Kelley: I will withdraw the question, Your Honor.

The Court: All right.

By Mr. Kelley:

Q. Do you know, Mr. Eckert, whether or not prior to the time of the creation of the Steering Committee, whether or not Communist Party members on the executive board control the executive board of Mine-Mill?

Mr. Witt: Object to it on the same grounds as the last question, on the ground Your Honor indicated. Nothing

in this question indicates any connection with the defendant.

Mr. Kelley: We will connect it up, Your Honor.

The Court: Executive board of what or who?

Mr. Kelley: Of the Mine-Mill union.

The Court: On your statement it will be connected up I will overrule the objection, but if it isn't it will be stricken on motion.

Mr. Kelley: Yes, Your Honor.

Mr. Witt: May we have the question read back, Your Honor?

The Court: Read the last question, Mr. Watson.

(The last question was read by reporter.)

Mr. Witt: We thought we had another objection; I think we do, Your Honor. That question is ambiguous in view of the use of the word "controlled." The word "controlled" would mean something different to different people, and it is one of these loose words that creeps into these cases that doesn't advance us any, and that permits the introduction of evidence which isn't tied in with the defendant, and which will mean different things to different members of the jury.

[fol. 98] The Court: I think the objection will be overruled. I think that goes to the question of the weight and can be developed on cross examination, so the objection will be overruled on the latter form.

A. Yes, I have such knowledge.

Q. And will you state what the fact was in that regard?

A. Prior to that time, about that time of the formation of the Steering Committee the vote on the Mine-Mill executive board was evenly divided between the Communist faction and the anti-Communist faction—

Mr. Witt: I am sorry to have to interrupt the witness, but his answer already seems to me highly improper that I feel compelled to interrupt the witness. The witness is going to make a speech, which again I say will be meaningless. He is talking about Communist factions and anti-Communist factions. He hasn't named the defendant. Nobody knows what a faction is, as far as this record is con-

cerned nobody does, so all that he has done thus far is start to make a stump speech, and he is not on the witness stand to make a stump speech to attack the defendant or Mine-Mill; he is to give evidence as to what he knew, what he saw, and what he heard.

The Court: The objection will be overruled, and as I say, the Government has announced that this evidence will be connected up either through the testimony of this witness or other witnesses with the defendant, and I am assuming that that will be done, so the objection will be overruled. You may continue with your answer. You can read to him the answer as far as he gave it.

(The reporter read from his notes as follows:)

"A. Prior to that time, about that time of the formation of the Steering Committee the vote on the Mine-Mill executive board was evenly divided between the Communist faction and the anti-Communist faction—" And therefore the Communists were not able to effectively control the union.

By Mr. Kelley:

Q. Now, as I recall your testimony before the noon recess you stated that the Steering Committee was organized in the early part of 1946, is that correct?

A. I said that, as I recall, to the best of my recollection, that it was organized sometime in early 1946. There is a [fol. 99] possibility it might have been the last of 1945; it was about this period.

Mr. Witt: I am sorry, Your Honor, we didn't realize Mr. Kelley was going to another subject. We now to (sic) move to strike the witness' answers culminating in the answer about the two factions, because there is nothing in that that we can see that is relevant to this case. He didn't mention the defendant in any way; there is just no connection.

The Court: Well, Mr. Kelley assured the Court that the matter would be connected up. He can't put all of his evidence in this one question or one answer or by one witness, and if when their evidence is completed the matter

isn't connected up you may renew your motion to strike, but at the moment the motion will be denied.

Q. Now, directing your attention, Mr. Eckert, to February, 1946, I will ask you whether or not there was a Steering Committee meeting held immediately prior to a Mine-Mill executive board meeting.

A. There was a Steering Committee meeting held immediately prior to a meeting of the International Executive Board about that time. I am not sure it was February; it was early in the year.

Q. Now, will you state, if you recall, the place where this Steering Committee meeting was held?

A. Well, it was held in Chicago; I don't recall the exact location.

Q. Now, will you state who was present at the Steering Committee meeting?

A. Among those that I recall being present in addition to the members of the Steering Committee, Maurice Travis, Chase Powers, Al Skinner and I, Harold Sanderson. I don't recall the specific individuals who may have been there; I know that it was a large meeting, but I don't recall the names of all the other individuals.

Mr. Witt: I move to strike the witness' remark that it was a large meeting, which again is typical of this witness. He will say either there was a large meeting or there were many others present, or he will throw in a general statement in order to exaggerate his testimony and to prejudice the defendant, and I think he should be cautioned to stop that.

Mr. Kelley: May I suggest to the Court that it is perfectly all right for counsel to make objections, but I don't believe that he has any right when the witness is on the [fol. 100] stand to attempt to impeach him by his own statements as to something that has gone on before, and I think he should be cautioned on that.

The Court: I am going to let the answer stand, but I think the witness should not volunteer information, and of course the use of these words like "frequent" and "large" and words of that kind are not very significant. I think it goes to the weight of the witness' testimony, but you

asked the witness to name those who were present at that meeting, and this latter part that Mr. Witt is talking about came as a volunteer portion to an answer to your question.

Mr. Kelley: Well, except this, Your Honor, that he is pointing out to the Court and the jury that he can remember at this time certain ones who were there and there were others that were there whose names he doesn't immediately recall.

The Court: But, that wasn't your question; you asked him to name those who were there. He can name those he recalls and say that others were there. If the size of the meeting is of moment you can ask him numerically, not large, small, or something else, but the point I am making is that it will save a lot of difficulty, I think, if the witness confines his answers to your questions.

Mr. Kelley: Very well, Your Honor.

By Mr. Kelley:

Q. In addition to those whom you have specifically named as being present were there others in attendance at the meeting?

A. Yes.

Q. Now, I believe you stated that Mr. Travis was there at this meeting?

A. Yes.

Q. And will you state what the purpose of this meeting was?

A. Well, the principal purpose was to decide on the steps that were to be taken by the Communists inside the executive board of Mine-Mill to begin the change in the, well, in the Communists' work inside Mine-Mill specifically.

Q. Now—

A. I haven't finished.

Q. Excuse me.

A. Specifically to discharge the attorney, the general counsel of Mine-Mill at that time, Willard Morris, to move the vice-president of the union, Ralph Rasmussen, from the Chicago office to Washington, and to make other organizational changes in order to improve the work of the Communist Party inside the union.

[fol. 101] Mr. Witt: I am sorry, Your Honor. I move to strike the witness' answer. There is nothing in that answer that connects defendant with any of that in any way. Let him tell and answer Mr. Kelley's questions as to what happened insofar as the defendant is concerned.

The Court: I am going to sustain the motion to strike and the jury will disregard the answer. The question, I think wasn't objected to. You said, "What is the purpose of the meeting?" It has been testified that Mr. Travis was there. What we are interested in is what happened there, not what the preconceived purpose was or something else, so you can reframe your question, and the question and answer will be disregarded by the jury.

What we want to know is what took place there. This may have been the witness' notion about what the purpose was and it may have never developed at the meeting. Ask him what was done at the meeting.

By Mr. Kelley:

Q. Mr. Eckert, do you recall who presided at that meeting?

A. Well, the state secretary of the Communist Party was there and—

The Court: He asked you if you knew who presided at the meeting, and it will avoid a lot of difficulty if you save your conjectures for your own consideration and answer the question. If you don't know, say you don't know.

A. Well, I am not sure who presided at the meeting.

Q. Now, do you recall whether or not Mr. Travis made any statements at that meeting?

A. Yes.

Q. And will you relate the substance of Mr. Travis' remarks at that time?

A. The substance was that, "Now, with having the majority of the votes on the executive board it was necessary to reverse the actions taken by the other group on the board that had been done previously at a Pittsburgh meeting, and to make these changes which would make it possible to carry on this work more effectively in Mine-Mill," the changes I referred to earlier.

Q. Did Mr. Travis—

Mr. Witt: I move to strike that last comment, because Your Honor struck the witness' reference to those changes. [fol. 102] The Court: Well, the (sic) purportedly is what Mr. Travis said, as I understand it, isn't it?

Mr. Kelley: No, he was referring to some changes and I think they were in the question, and I think probably the jury should just—it has no significance, the remarks that are objected to.

The Court: Read the question again, Mr. Watson.

(The last question was read by the reporter.)

The Court: That part, "the changes I referred to earlier," can be stricken out.

Q. Now, did Mr. Travis make any statement in reference to what specific changes should take place at that time?

A. Yes.

Q. And will you state what those were?

A. He was directing the substance of his remarks, the changes of moving Willard Morris, discharging Willard Morris as general counsel of the union, moving the vice-president's office, Ralph Rasmussen, from Washington to Chicago, and certain staff changes which were to be made.

Q. Now, Mr. Eckert, I believe that I detected in your testimony that the first time you mentioned the transfer of Mr. Rasmussen that you said from Chicago to Washington, and this time from Washington to Chicago. Now, which is the fact as to that?

A. From Washington to Chicago.

Q. Thank you. Now, will you state whether or not Mr. Rasmussen was a member of the Communist Party at that time?

Mr. Witt: Object to it; no relevance to the issues in this case.

The Court: What is the relevancy, Mr. Kelley?

Mr. Kelley: We have been talking about the purpose of this Steering Committee and the control of the union, and the answer that is elicited on that question will show on which side of the fence Mr. Rasmussen was and clear up the picture a little better for the jury.

Mr. Witt: As I see it, it would merely confuse the jury [fol. 103] further. As far as this man's testimony to this point is concerned, all that the jury has been told is that Travis thought that Rasmussen should be moved from Washington to Chicago. It is a meaningless statement in that context. All it means is that the suggestion was made that instead of the vice-president of the union having offices in Washington they should have them in Chicago, so how it would throw any light on that to have this witness tell us now whether or not Rasmussen was a member of the Communist Party?

Mr. Kelley: We would be very glad to develop that for you.

The Court: He can answer that; the objection will be overruled.

A. He was not a member of the Communist Party.

Q. Now, was any statement made by anyone at that meeting as to why Mr. Rasmussen should be transferred from Washington to Chicago?

Mr. Witt: Object to it as calling for hearsay, Your Honor.

The Court: You should add to the question Mr. Travis' presence or something. I think you are assuming he was there, but he identified him as being there, but it wouldn't be admissible unless it was made in his presence.

Mr. Kelley: Well, I don't know whether there was anything said on that subject yet. I think we have to determine that first. If there wasn't there is no use finding out if anyone was there. All I have asked him is whether or not there was a statement made.

The Court: All right, he can answer the question yes or no.

A. Yes.

Q. Now, at the time that this statement was made was Mr. Travis still at the meeting?

A. Yes.

Q. Who made the statement?

A. The statement was made by Mr. Travis.

Q. And will you state what the remarks were in regard to [fol. 104] Mr. Rasmussen?

A. The substance of the remarks was that Ralph Rasmussen's office in Washington enabled him to come in contact with a considerable number of local union leaders of Mine-Mill who had occasion to have union business in Washington, and this was enhancing the prestige of Mr. Rasmussen, and that his office should be moved from there to Chicago.

Q. Where were the national offices of the Mine-Mill union at that time?

A. In Chicago.

Q. Now, what is the fact as to whether or not the general counsel, Mr. Morris, whom you mention, was a member of the Communist Party, to your knowledge?

Mr. Witt: Same objection as to the question.

The Court: The objection will be overruled.

A. He was not.

Q. Now, following this Steering Committee meeting about which you have just testified, did you attend an executive board meeting?

A. Yes, I did.

Q. And I am referring to the executive board of Mine-Mill when I use the words "executive board."

A. That's what I understood it to mean, Mr. Kelley.

Q. And where was this executive board meeting held?

A. It was held in Chicago.

Q. And was Mr. Travis present at the executive board meeting?

A. Yes.

Mr. Deikman: May we have a date, Your Honor?

Mr. Kelley: This was immediately following the Steering Committee meeting which he had just testified to.

Mr. Deikman: Immediately?

Mr. Kelley: Well, that's one of those words that you can interpret differently; it might have been.

Mr. Witt: Well, Mr. Kelley—

The Court: I think they have a right to have the time fixed. If there is any question about that ask him how soon after the meeting, and when with respect to the meeting, or something in days.

[fol. 105] Mr. Witt: This witness has testified on at least five occasions as to the date of that meeting, so Mr. Kelley can ask him what the date was or what the month was.

The Court: You can inquire; fix the time some way.

By Mr. Kelley:

Q. How long after your executive board meeting was this executive board meeting, after your Steering Committee meeting, I mean?

A. My recollection is that the executive board meeting followed the Steering Committee meeting by not more than a day or so; I don't recall exactly.

Q. Now, at that time what was Mr. Travis' position with the Mine-Mill union?

A. Well, to the best of my recollection at that particular time he was working as an assistant to the president.

Q. Now, was he present at the executive board meeting that we are talking about?

A. Yes.

Q. Now, did the executive board take any action at that meeting in reference to the matters about which you have testified occurred at the Steering Committee meeting?

A. Yes.

Q. And what action was taken in that regard?

A. The general counsel was discharged. Mr. Rasmussen's office was moved to Chicago and his assignment changed. Those were the two main things that I recall.

Q. Now, Mr. Eckert—do you have an objection, Mr. Witt?

Mr. Witt: No, Mr. Kelley.

Q. —directing your attention to the spring of 1946, I will ask you if you recall a meeting which was held at the Russian Co-operative Restaurant in Chicago, at a place above the Russian Co-operative Restaurant?

A. Yes.

Q. And can you place the approximate date of that meeting?

A. No, other than to the best of my recollection it was in May.

Q. Now, do you know who called the meeting?

A. Yes.

Q. And who called it?

A. The meeting was called by the Communist Party Steering Committee.

Q. By the Steering Committee?

A. Yes.

Q. Now, at this meeting will you state some of those who were present? First let me ask you this question: About how many attended that meeting?

A. Well, to the best of my recollection there must have been—I think there was seventy-five or more, maybe slightly less, around that figure.

[fol. 106] Q. Now, will you tell me some of those who were present?

A. The members of the Steering Committee, Maurice Travis, Chase Powers, Al Skinner and myself, Harold Sanderson, Bernard Stern, Leon Gorelick, Irving Dichter, Alex Berlint, William Gately; these are some of the names that I can recall at the moment.

Q. Now, I don't think that in your previous testimony in this trial that you mentioned the name of a Mr. Stern. Will you—did you have an objection, Mr. Witt?

Mr. Witt: No, I am just listening, Mr. Kelley; I am sorry.

Q. Will you state who Mr. Stern was at this time?

A. Mr. Stern was the research director of the union.

Q. And what, if you know, was his status as to being a member of the Communist Party?

A. Yes, he was.

Q. You mentioned the name Gorelick, and I think it is for the first time. What was his position?

A. He was executive secretary of Mine-Mill Local 700 in Los Angeles, California.

Q. Do you know whether or not he was a member of the Communist Party?

A. He was.

Q. You mentioned a person by the name of Gately. What position did he hold, if any?

A. He was an international representative of the union.

Q. And do you know whether or not he was a member of the Communist Party?

A. Yes.

Q. And was he?

A. Yes.

Q. Now, what kind of a meeting was this? You said there were seventy-five or more there. What was the composition of the people who were there?

A. They were all members of the Communist Party who were either officers of Mine-Mill, staff members, local union officers, or in some cases rank and file members of the union.

Q. And from whence did they come?

A. They came from throughout the entire jurisdiction of the union, the United States and Canada.

Q. Now, do you recall who presided at this meeting?

A. It is my recollection that Mr. Travis presided.

Q. Now, do you recall whether or not Mr. Travis made any statement at the time he opened the meeting?

A. Yes.

Q. And will you state what he said at that time?

A. The substance of Mr. Travis' statement was that this meeting had been called to bring together the Communist [fol. 107] Party members in the Mine-Mill & Smelter Workers, or at least a considerable number of them, to acquaint them with the changed situation in the union and the efforts being made to increase the role of the Communist Party in the union, and specifically that a so-called ten point program was being submitted to the meeting to be discussed by them, and if adopted to be subsequently presented to the convention of the international union to be held sometime later that year in Cleveland.

Q. Now, what action, if you recall, was taken on this program that was submitted by Mr. Travis at that meeting?

A. The program was adopted by the meeting.

Q. Now, do you know whether or not the program that was adopted at that meeting was later submitted to the executive board of the Mine-Mill union?

A. Yes, it was.

Q. Now, I believe you said that the purpose of the program was to submit, if adopted by the Board, to submit it to the convention upcoming in Cleveland, is that correct?

A. Yes.

Q. Now, this is still 1946, is it not?

A. Yes.

Q. Do you recall about when the convention was held in Cleveland?

A. My recollection is the early fall of 1946.

Q. Now, at about the time that the convention was held were there any Steering Committee meetings?

A. Yes.

Q. And do you recall any that occurred immediately prior to the convention?

A. Yes.

Q. Do you recall where this particular Steering Committee meeting was held?

A. The first one that was held prior to and during the convention, my recollection is it was in the Hollanden Hotel in Cleveland.

Q. Now, who was present at this meeting?

A. John Williamson, Maurice Travis, Powers, Skinner and myself. I think Harold Sanderson was there. There might have been a few others, but that's all I can recall.

Q. Now, Mr. Eckert, you mentioned John Williamson. Will you state who John Williamson was at this time, that is, at the time of this meeting?

The Court: He already has testified to that.

Q. Have you testified to John Williamson?

A. Yes.

Q. During the year 1946 have you testified as to his position?

The Court: I don't know whether it was 1946, but he testified as to who he was when he mentioned his name in a former meeting.

[fol. 108] Mr. Kelley: Well, his position has changed a time or two. Whether it changed during this period I don't know, Your Honor.

Mr. Witt: I object to that statement of Mr. Kelley's and move that it be stricken.

The Court: It will be stricken.

Mr. Kelley: I can't ask him who Williamson was at the time of this meeting?

Mr. Witt: We have no objection to that, Your Honor.

The Court: Yes, he can answer that question.

The Witness: He was National Trade Union secretary of the Communist Party.

By Mr. Kelley:

Q. Now, did Mr. Travis make any statements during this meeting in the Hollanden Hotel?

A. Yes.

Q. And will you state the substance of the remarks that he made?

A. The substance of Mr. Travis' remarks was that he agreed with the proposals of Mr. Williamson pertaining to the selection of and supporting of candidates who were to run for international office at the convention which was pending in Cleveland.

Q. Was there anything said by Mr. Travis specifically as to who were to run for officers of the Union at that time?

A. Yes.

Q. And will you state what he said in that regard?

A. In substance Mr. Travis stated that he supported the proposal made by Mr. Williamson to endeavor to obtain a candidate to run for International Secretary-Treasurer who had not been identified with the Communist faction in the Union but who could be expected to not support the attempts of the anti-Communist faction to remove the then President of the Union and certain other officers at that time and discussed the candidacy of other candidates for the office—offices that were to be filled by the convention or to be nominated at the convention, rather.

Q. Now, Mr. Eckert, as a result of this Steering Committee meeting was a program adopted to present to the convention?

A. Yes.

Q. And did that, can you state whether or not that [fol. 109] program carried out the suggestions of John Williamson that were made at that time and about which you have testified?

A. Yes, they were.

Q. Now, I will ask you if you recall any statements made by Mr. Williamson at that time.

A. Yes.

Q. And will you state what he said at that time, and I will ask you further, was Mr. Travis still present when this statement was made?

A. Well, the substance, some of the statements made by Mr. Williamson while Mr. Travis was present was this matter of trying to get a person to run for Secretary-Treasurer, the type of person I previously described. Mr. Williamson also stated that he could not remain in Cleveland, he had to leave, but that Gil Green, who was the Party person, Communist Party person responsible for work in Mine-Mill, that he would be in town and that the Steering Committee would be able and should meet further with Mr. Green and take instructions from him.

Q. Now, what is the fact as to whether or not the program adopted in the Steering Committee was carried out at the convention?

A. Well, basically it was with some exceptions, one notable exception.

Q. Have you finished your answer?

A. Yes.

Q. Now, Mr. Eckert, did the Mine-Mill Union hold a convention in the year 1947?

A. Yes.

Q. And did you attend that convention?

A. Yes.

Q. Do you know whether or not Mr. Travis attended that convention?

A. Yes, he did.

Q. Now, do you recall approximately when this St. Paul convention was held?

Mr. Witt: The witness hasn't testified that the convention was held in St. Paul.

The Court: No, that's right.

Mr. Witt: I move to strike Mr. Kelley's testimony.

The Court: It will be stricken.

Q. Do you know where the 1947 convention was held, Mr. Eckert?

A. You are right, Mr. Kelley, it was held in St. Paul.

Q. Do you know about when it was held?

A. I don't recall just when. My recollection is that it was I think late summer or early fall. I don't know which. [fol. 110] Q. Now, did the Steering Committee hold any meetings prior to, during, after this convention?

A. Yes.

Q. Do you recall whether there were any Steering Committee meetings held prior to the convention dealing with what was to be done at the convention?

A. Yes.

Q. Was such a meeting held?

A. Well, there were meetings, Mr. Kelley.

Q. Several meetings?

A. Yes.

Q. Well, do you recall a particular meeting which was held in the City of Chicago?

A. Yes.

The Court: I think it would be better if you let the witness testify where they were held and when rather than—

Mr. Kelley: Well, your Honor, as he stated, there were many, many meetings, and I am merely trying to save a little time. I can do it the other way if that is your wish.

The Court: I think it would be better if you asked him where the meetings were held and then enumerate them, and then, if you have one you wish to mention, you can ask about that meeting.

Mr. Witt: We object to Mr. Kelley's statement that the witness testified that there were many, many meetings. The witness hasn't so testified.

The Court: I didn't think he so testified either.

Mr. Kelley: He said there were several. I apologize to the Court and to Mr. Witt. Now, it seems to me, your Honor, in order to carry this thing along when there have been more than one meetings—

The Court: He said several meetings. You asked him the question. I do not know whether it is quibbling or not. You made the question very broad—before, after or during. He said there were several meetings. You started to ask about one meeting, and he said there were several meetings.

Mr. Kelley: That's right. I want to direct his attention to a particular meeting.

The Court: You can simply ask him where the meetings were held and then, if there is one of them you want to refer to, you can specify the meeting.

[fol. 111] Q. Do you recall where the meetings were held, Mr. Eckert?

A. Yes.

Q. Will you state where those meetings were held?

A. One or more was held in Chicago, and one was held in St. Paul immediately prior to the convention and subsequent Steering Committee meetings during the convention.

Q. Do you recall whether there was more than one meeting held in Chicago relating to the matters to be taken up at the St. Paul convention?

A. Yes.

Q. And where were the different meetings held there?

Mr. Witt: Well, the witness has said there was more than one, and now Mr. Kelley has referred to different meetings. We can't tell whether he is talking about two or 700 meetings. Why doesn't Mr. Kelley ask him how many?

The Court: You can get to the same question if you ask him where they were held and enumerating the places probably would suffice. The witness said I think there were one or more meetings held in Chicago, and you can ask him how many meetings were held in Chicago and then get to the one you want to ask him about.

Q. How many meetings were held in Chicago, Mr. Eckert, if you recall, at that particular time?

A. I recall two meetings of the Steering Committee to deal with this matter of the convention.

Q. Do you recall where those meetings were held?

A. One meeting was held at the home of the Editor or Associate Editor of the paper, Henry Horowitz.

Q. And this was at his home in Chicago, is that right?

A. Yes.

Q. I think this is the first time you have mentioned the name of Henry Horowitz, is it not? Will you state if you know whether or not Henry Horowitz was a member of the Communist Party?

A. Yes, he was.

Q. And I believe you stated he was the Associate Editor of the Union paper?

A. Yes.

Q. Now, about how many people, if you recall, were present at this meeting?

Mr. Witt: I am sorry, your Honor, Mr. Kelley has now asked the witness where one meeting was held and he said at the home of Horowitz. He has not asked him where the other meeting was held.

[fol. 112] The Court: He may not be wanted (sic) to refer to the other meeting. He is simply asking him about the meeting at Mr. Horowitz' home I think.

Mr. Witt: I won't press it, but I think it would clarify the record if Mr. Kelley would ask him where the other meeting was held.

Mr. Kelley: I would like to try this case in my own way and to the Court's satisfaction.

The Court: I think you may proceed. That can be gone into on cross examination. You are not bound to go into that now.

Q. I asked you how many people were at this meeting at Henry Horowitz' home. A. As near as I can recall a dozen or more.

Q. Now, what kind of a meeting was this?

Mr. Deikman: Objection, your Honor.

The Court: I will sustain the objection, because I do not know what you mean by "type", and I do not know whether the witness would have in mind the same thing. The test is what happened.

Q. Now, will you name those whom you can remember who were present at that meeting?

A. The members of the Steering Committee, Maurice Travis, Al Skinner, myself, Harold Sanderson, Chase Powers, Clinton Jencks, William Gately, Mr. Dolan, Graham Dolan I believe his name is, Irving Dichter, Herman Clott, Gil Green, Fred Fine. These are names of some of the people that occur to me who were there.

Q. I think this is the first time that you mentioned the name of Fred Fine. Will you tell us who Fred Fine was?

A. He was the Trade Union Secretary of the Communist Party of Illinois.

Mr. Witt: The witness has so testified earlier.

Mr. Kelley: I had forgotten. I am sorry.

Mr. Witt: As long as I am on my feet, your Honor, may we have the time of this meeting fixed if the witness can [fol. 113] a little more exactly? It is kind of vague.

The Court: I think you should fix the time more definitely, Mr. Kelley. It hasn't been fixed at all except it was before the convention sometime.

Q. I think you said at the time of the convention in the late summer or early fall of '46, and that was prior to that time.

The Court: Whether it was a week or two weeks or a month before hasn't been mentioned.

Mr. Witt: Mr. Kelley just misspoke. We are talking about '47. Mr. Kelley just said '46. Just so the record won't be confused.

Mr. Kelley: All right.

Q. You might—

The Court: You might ask him about when it was.

Q. When or how long prior to the St. Paul convention did this meeting occur?

A. Well, it was just prior to the convention, I believe not more than a few days before the convention opened.

Q. Now, you have mentioned some other names I think for the first time—Mr. Clott and Mr. Jencks and possibly one or two others. I would like to ask you this question: Was there anyone present at that meeting who was not a member of the Communist Party?

A. No.

Q. At this meeting did anyone preside? Was it a formal or informal meeting?

A. Well, it was a business meeting. It was not formal in the sense that parliamentary rules did not apply or anything like that, but it was a business meeting. In that sense I believe it would be formal.

Q. Did Mr. Travis make any statement at that meeting?

A. Yes.

Q. And will you give the substance of what Mr. Travis said at that time?

A. The substance of Mr. Travis's statement, at least one of the matters that I can recall was that he was in agreement with the proposals that have been made by Gil Green that he not run for reelection as President of the Mine, [fol. 114] Mill & Smelter Workers and that he was in agreement with the supporting of the candidacy of Jack Clark, that he favored the candidacy of Reed Robinson for Eastern Vice President, and stated later in the meeting that because we could not resolve the question of whether to support Homer Wilson for Eastern Vice President that the decision should be made by this Party meeting to support Jack Clark for President and he, Travis, would run for Secretary-Treasurer of the Union, and that the matter of whether the Party should support Homer Wilson for Eastern Vice President or Reed Robinson would be settled at the Steering Committee meeting in St. Paul prior to the convention.

Q. Now, Mr. Eckert, do you recall any statement having been made by Gil Green at that meeting?

A. Yes.

Q. And will you state what he said?

A. The substance of the statement made—statements made by Gil Green, first of all, in relation to whom the Communist Party should support for President of the Mine, Mill & Smelter Workers, that it was his belief and that of the Communist Party that the CIO's opposition to the Communists in Mine-Mill, specifically to Maurice Travis as President, that he felt that Travis should not run for President of the Union. He stated that he believed the candidacy of a person like Jack Clark, who although not a Communist could be expected not to oppose the Communists inside the Union, that, therefore, the Party should support Clark for President, and he stated that he would also go along with the Party supporting Travis for Secretary-Treasurer of the Union and discussed further the candidacy for Western Vice President, Wesley Madill, and I don't recall whether he took the position of Madill at that time or not.

Q. Now, do you recall whether or not any action was

taken by that group or the Steering Committee at that meeting?

A. Yes.

Q. And what action was taken?

A. The action taken was, first of all, for the Party to support Jack Clark for President of Mine-Mill.

Mr. Deikman: Objection, your Honor. It seems to me that what action such a group took is really the opinion of this witness. It has no relation to the defendant, it is not the action that the defendant took. I do not see how a person can give an opinion as to what a group did.

Mr. Kelley: It is not an opinion that he is testifying to. [fol. 115] The Court: I think I will overrule the objection. He can answer the question.

A. I am afraid I will have to have the question read back.

Mr. Kelley: He was in the middle of his answer at that time.

The Court: The reporter can read the question and so much of the answer as he gave.

(The reporter read the last question and answer.)

A. And Maurice Travis for Secretary-Treasurer, that the matter of whom to support for Eastern Vice President whether it be Reed Robinson or Homer Wilson would be left to a later decision to be made by the Steering Committee in St. Paul.

Q. Now, I believe you stated that there were two meetings of the Steering Committee in Chicago prior to the 1947 convention in St. Paul. Do you recall when in reference to the time of the Horowitz meeting the other meeting occurred?

A. There had been another meeting prior to the meeting in the Horowitz house in the Communist Party office in Chicago where these matters had been discussed and decision made there to call what we called at this time an enlarged—

Mr. Deikman: Objection, your Honor.

The Court: I will sustain the objection.

Mr. Kelley: To what?

The Court: You haven't established that Mr. Travis was at this other meeting or anything else, the Jury will disregard that answer.

Mr. Kelley: It is true that we got into what happened without complete foundation.

Q. At this meeting in the Communist Party Headquarters will you state who was present there?

A. Maurice Travis, Gil Green, Fred Fine, Al Skinner, myself, Harold Sanderson. I don't recall whether the other member of the Steering Committee, Chase Powers, attended [fol. 116] that meeting or not.

Q. Did Mr. Travis participate in this meeting?

A. Yes.

Q. And now, will you state what occurred there at that meeting?

A. A discussion was held by those of us attending and statement made by Mr. Green pertaining to the coming convention and the selection of officers and their having stated a position similar to the one I previously described he felt that Travis should not run for President of the Union, that Jack Clark should be supported for President, and to call what we referred to as an enlarged meeting of the Steering Committee.

Q. And that is the meeting that you just previously testified to at Horowitz' house?

A. Yes.

*****

Mr. Kelley: We go now to St. Paul. It is a good breaking point as far as I am concerned.

Mr. Witt: I have one problem before we recess so we won't have to worry about it when we come back. I may have missed it, but I do not think the witness fixed the time of this meeting in the Communist Party Headquarters before the Horowitz meeting.

The Court: I think he said, but he didn't say when, how long before. You had better ask him that before we leave.

Q. All right, Mr. Eckert, how long before the Horowitz meeting was the meeting in the Communist Party Headquarters?

A. My recollection is that it was not long, insofar as I can recall, not over several weeks before the Horowitz meeting.

Q. You are not able to fix the exact date?

The Court: Can he fix a more definite date like one week, two weeks, three weeks?

Q. Could you say it was one week or two weeks or three weeks or just approximately?

A. I really don't know.

Q. This was in 1947, is that right?

A. Yes.

Q. And you stated that the meeting at Horowitz' house was just a few days, as I recall, prior to the convention?

A. Yes.

Q. Now, can you say within a week or two or three how long before the Horowitz meeting the event occurred?

[fol. 117] A. I don't think I could accurately say any closer than I did before.

Q. But it related to what was to be done at the Horowitz meeting, is that correct?

A. Right.

The Court: I think that maybe he mentioned it already. We will have a recess for 15 minutes.

The Court: You may proceed.

By Mr. Kelley:

Q. May it please the Court, ladies and gentlemen of the jury. Mr. Eckert, did you attend the convention of the International Union of Mine-Mill in St. Paul in 1947?

A. Yes.

Q. And do you know whether or not the defendant was present during that convention?

A. Yes, he was.

Q. And at that time what was the position of Mr. Travis in the union prior to the convention?

A. President.

Q. Now, I believe you testified that there were some meetings of the Steering Committee during this convention, is that correct?

A. Yes.

Q. Do you know about how many may have been held?

A. There was at least one official meeting of the Steering Committee. We had meetings of, well, sort of partial; some members of the committee would be there, some wouldn't during the convention to discuss various matters.

Mr. Witt: We move to strike everything the witness included in that answer after he said there was at least one meeting. If I understood the rest of his answer he is now trying to say that when he would have a conversation with a member of the Steering Committee then that made it a partial meeting of the Steering Committee, or something of that character, and we can't deal with vague and uncertain testimony of that kind.

The Court: I think I will overrule the objection, because he stated on an informal basis. He mentioned one meeting and then he said there were other meetings of smaller group (sic). Before we go into any of those we can consider the objection relating to any of them, so you may proceed, Mr. Kelley, and the objection will be overruled.

Q. Now, this one meeting that you referred to as a true—[fol. 118] I would characterize your statement as being a true Steering Committee meeting—where was that held?

A. In a hotel room in St. Paul.

Q. And who was present at that time?

A. Present were Maurice Travis, Chase Powers, Al Skinner, myself, Harold Sanderson, and the national representative of the Communist Party. His name I cannot recall.

Q. Now, do you recall what the subject matter—well, was there anything discussed at that meeting?

A. Yes.

Q. And what was the subject matter of what was discussed?

Mr. Deikman: Objection, Your Honor; I think it is improper to ask his opinion as to what the subject matter was. He should only testify as to what he heard and saw at that meeting.

The Court: I think that is technically correct. He can say what was said at the meeting. His conclusion about

what the subject matter was might differ from that of someone else there and the jury is the ultimate judge of what transpired, and it must be from the statement of those present.

Q. All right, Mr. Eckert, I will ask you whether or not Mr. Travis made any statements at that meeting?

A. Yes.

Q. I believe you mentioned Mr. Skinner was there. Did he make any statements at that meeting?

A. Yes.

Q. And I believe you said Mr. Powers was there?

A. Yes.

Q. Did he make any statements?

The Court: Why don't you ask him who made statements and who said what?

Q. Now, Mr. Eckert, will you relate the substance of what the several members of the Steering Committee said at that meeting?

Mr. Deikman: Objection, Your Honor. The question calls for a sort of a compendium of what everyone said at a meeting.

The Court: I think Mr. Kelley means, and what the witness should testify to, he should attribute the statement to whoever made it, not any concensus of the statements, but Mr. so and so said this, that, or the other thing, and Mr. so and so said what he testifies to; so you may proceed [fol. 119] on that basis. You can identify the speaker; that's all it amounts to, and say what he said.

A. Mr. Travis stated that he felt that Reid Robinson should be supported for eastern vice-president and oppose Homer Wilson. Mr. Skinner stated in substance the same viewpoint. I stated a different viewpoint, that I thought that Mr. Wilson should be supported, and later I stated that after receiving the instructions from the national representative of the party there, I agreed to go along and support the decision of the Steering Committee to support Reid Robinson for eastern vice-president instead of Homer Wilson.

Q. If you covered this I missed it. Did you state the

position or (sic) whether or not Mr. Powers took a position on this matter?

A. I don't recall whether he did or not.

Q. I will ask you whether or not you are familiar with the term "progressive caucus"?

A. Yes.

Q. And what is a progressive caucus as it is known in the Mine-Mill union, or was known at that time, and in the Communist Party?

Mr. Deikman: Objection. There is no foundation for an opinion by the witness as to what a progressive caucus is.

The Court: What is the purpose, Mr. Kelley?

Mr. Kelley: I am merely trying to enlighten the jury, Your Honor, on the next meeting that I am going into.

The Court: Let's go into the meeting.

Mr. Kelley: We can get into the meeting and then describe it.

The Court: There is no foundation now for the question, so I will sustain the objection.

Q. Now, was there a progressive caucus meeting held during the St. Paul convention?

Mr. Deikman: Imminently leading in view of Your Honor's ruling.

The Court: Ask him if any meeting was held. It is [fol. 120] not for you to denominate or the witness even what the meeting was. The jury are the ones that are interested in determining that from the evidence.

Mr. Kelley: That's right, Your Honor; this is merely a foundation question.

The Court: Ask him if he was at any other meetings?

Q. Did you attend any other meetings during this convention?

A. Yes.

Q. And will you name the meetings that you attended?

A. I attended the meeting of the progressive caucus.

Q. And any others?

A. Well, I attended a number of convention committee meetings and the meetings of the Diecasting Division of the union that I headed.

The Court: We are only concerned with meetings at which Mr. Travis was present, and I think your question ought to embrace that. You may have been to a dozen meetings, but it would have no significance here.

Q. You mentioned having attended a progressive caucus meeting, and I will ask you whether or not Mr. Travis attended that meeting?

A. Yes, he did.

Q. And who presided at that meeting, if you recall?

A. I don't recall who presided at the meeting.

Q. And about how large a meeting was it?

A. My recollection is that the meeting contained fifty, sixty people, more or less. That's about as close as I can recall.

Q. And will you name those that you recall being present at that meeting?

A. The people present were members of the Steering Committee, Maurice Travis, Chase Powers, Al Skinner and I, Harold Sanderson, Maurice Wright, Irving Dichter, Mr. Jencks, Peter Zvara, Ernest Love. These are some of the people I recall having been there; Homer Wilson, also.

Q. And you estimated about fifty or more. Now, do you know what the fact is in regard to whether or not the remainder of those who were there were members of the Communist Party or not?

Mr. Deikman: Objection, Your Honor. He hasn't stated anything about any political affiliation of anyone at the [fol. 121] meeting. The "remainder" is meaningless, and further how could the witness possibly know the affiliation of sixty-odd people?

The Court: He is simply asking if he knows. The objection will be overruled. You can answer the question.

A. Yes.

Q. Now, does that apply to those you didn't name as well as to those you did name?

The Court: I don't know what the witness' answer was. Read the question and answer.

(The last previous question and answer were read by the reporter.)

The Court: That's what I thought. He only said he knew.

Mr. Kelley: That was my error; I apologize to the Court.

Q. Now, what is the—

Mr. Witt: If the Court please, that may still be a little ambiguous. The "remainder," does that refer to those who were there whom he didn't name specifically, is that the way Your Honor understands it?

The Court: That's the way I understood it.

Mr. Kelley: I might clear that up, Your Honor. Let me preface it this way, that I have previously asked him about a number of those named as to their affiliation or membership with the Communist Party, and this time I was covering the balance of those, what kind of a meeting it was, and who was there, that was what I was trying to get at.

Q. You state that you know the type of people that were there, is that correct?

A. In a general way I do; some I do, some I do not.

Q. Well, in a general way will you state—

The Court: I think his answer disqualifies him. He says, "In a general way he does and he does not." The thing has [fol. 122] to be specific; if he knows he knows, if he doesn't know he doesn't know, so I think you better proceed to something else.

Mr. Kelley: All right, Your Honor.

Q. Now, did Mr. Travis speak at this progressive caucus meeting?

A. Yes.

Q. And will you state the substance of his remarks at that time?

A. The substance of his remarks were that he was not running for president, he was running for secretary-treasurer, that he felt that the progressive caucus should not support Homer Wilson for eastern vice-president, that the progressive caucus should support Reid Robinson for eastern vice-president, Wesley Medill for western vice-

president, George Clark for president. This was the substance of the remarks as I recall them.

Q. And at that meeting did you make any statement in connection with this same matter?

A. Yes.

Q. And was Mr. Travis present at that time?

A. Yes.

Q. And will you state the substance of your remarks at that time?

A. The substance of my remarks were the same as Mr. Travis'.

Q. Now, do you know what the fact is as to whether or not in the election that followed whether or not the candidates supported by the Steering Committee were elected by the membership of the union?

Mr. Witt: If the Court please, before the witness answers that question, I don't think Mr. Kelley asked the witness to fix the place where this meeting of the progressive caucus was held. I think he did say St. Paul, but we think we should know where in St. Paul.

Mr. Kelley: I think you are right, Mr. Witt.

Q. Where was the progressive caucus held?

A. It was held in a hall near where the convention was held. I don't recall the street or the name of the place.

Mr. Deikman: Your Honor, I object to the question itself. It calls for a conclusion as to what the results of an election were.

[fol. 123] The Court: We are talking about two questions. He didn't answer the other question, and Mr. Witt raised the question that the place hadn't been identified, and I think Mr. Kelley just asked where this meeting was held. That's the present pending question.

Mr. Kelley: I think it is, Your Honor.

Mr. Deikman: Excuse me.

Mr. Kelley: And he has answered that now. He stated it was in a hall.

The Court: Did you fix the time of the meeting?

Mr. Kelley: During the convention is as close as we have fixed it.

The Court: Do you wish to inquire whether he can fix it any nearer than that?

Q. Do you remember how many days this convention lasted?

A. Well, it was about four or five days, as close as I can recall.

Q. And do you recall whether the progressive caucus was held early in the convention or along in the middle or at the end, or can you place it any better than just during that period?

A. Well, my recollection is it was held during that convention prior to the nominations of these officers from the convention floor. About as close as I can put it, Mr. Kelley, it was held during the evening during the days the convention was meeting. I don't recall it any closer than that.

Q. Now, I don't know whether you answered the question that I asked you if you knew of your own knowledge whether or not the candidates supported by the Steering Committee or sponsored by the Steering Committee were elected by the members of the union?

Mr. Deikman: Objection, Your Honor.

The Court: I think I will sustain the objection. I haven't heard any testimony that the Steering Committee sponsored them or anything to that effect. I have heard it said who Mr. Travis and some of the gentlemen who spoke were.

[fol. 124] Q. Well, let me ask you this: was any decision made or report made by the members of the Steering Committee in reference to candidates at that convention?

A. Yes.

Q. And what was that report or decision?

Mr. Deikman: Objection, Your Honor.

The Court: Who was the report made to?

Q. To whom was the report made?

A. The report of the Steering Committee?

Q. Yes. I will withdraw that question.

May it please the Court, at this Steering Committee at the hotel Mr. Eckert has testified at least three members of the four members on the Steering Committee all spoke in

favor of certain candidates and they appeared on the floor of the caucus and supported those candidates. It seems to me that the question I asked is encompassed in that background. Now, I can change the form of the question and ask this:

Q. Do you know whether or not the candidates which the individual members of the Steering Committee—.

The Court: Why don't you ask him simply who was elected to these respective offices at the convention, and the jury can decide?

Mr. Deikman: Well, Your Honor, I don't see the possible relevancy of that information.

The Court: It may not be the best evidence. If he wants to ask him that, who was elected president at the convention and who was elected secretary-treasurer, and who was elected eastern president.

Mr. Kelley: Well, Your Honor, I was trying again to save time and not go into the process by which they are elected. They are elected by a referendum rather than at the convention.

Mr. Witt: I object to Mr. Kelley's testifying.

The Court: I think I better let you proceed and withdraw my own suggestions, and I will rule on the questions you ask, and so ask the question.

[fol. 125] Q. Mr. Eckert, do you know of your own knowledge whether or not the officers or the candidates for office in the Mine-Mill union who were supported by the Steering Committee at the progressive caucus were elected by the membership of the union?

Mr. Witt: Object to that.

The Court: I will sustain the objection to the form of the question. I haven't heard any connection between this progressive caucus and the Steering Committee; I don't know the connection. I have heard about these meetings in Chicago and this meeting in St. Paul of the Steering Committee, but not this subject you are talking about now.

Mr. Kelley: Your Honor, the answer to this question provides the connection.

The Court: But, it is on a premise that isn't in evidence. There is no foundation for the question.

Q. Well, were candidates elected by the membership of the Mine-Mill Union following the St. Paul convention?

Mr. Witt: I object to that as being irrelevant, your Honor.

The Court: If he knows, I think he can answer that.

A. Yes.

Q. Now, were the candidates who were supported by the members of the Steering Committee at that convention elected by the membership of the Mine-Mill Union?

Mr. Witt: I object to that. There is no foundation for that.

The Court: That is on the basis that no premise has been laid. I don't know about this Steering Committee, what they recommended at all. If it is in the record, I overlooked it.

Mr. Kelley: I said the individual members.

The Court: There is no evidence about that. He expressed what he thought. I heard what Mr. Travis thought [fol. 126] and one other member, but I haven't heard what the rest of them thought.

Mr. Kelley: All right. We will pass it. It is not of great moment.

Q. Now, Mr. Eckert, directing your attention to the year 1948 I will ask you whether or not you attended any meeting in New York City with the defendant Maurice Travis.

A. Yes.

Q. Did you attend more than one meeting during that period with him?

A. Yes.

Q. Will you name, can you tell about how many meetings during, say, the early part of 1948 that you attended with Maurice Travis?

Mr. Witt: In New York City is the question?

Mr. Kelley: Yes.

A. Well, I recall a couple of them.

Q. Will you state where the two that you recall were held?

A. Well, one was held in a hall of a, what was known as a trade union building or center in downtown Manhattan in New York City. The street I don't recall.

Q. Now, was Mr. Travis with you when you attended this meeting?

A. Yes.

The Court: When was this?

Mr. Kelley: That is the next question, your Honor.

The Court: All right.

Q. About when, if you can state, Mr. Eckert, did this meeting occur?

A. Well, it occurred the early months of 1948, I believe February as near as I can recall.

Q. Now, who were present at this meeting?

A. Present in addition to Maurice Travis and myself were John Williamson, Eugene Dennis, William Z. Foster, Arnold Johnson, Al Lannon, Hugh Bryson, James Matles, Julius Emspak, a couple of people representing the Furniture Workers Union, I don't recall their name, another person representing the or a couple of people representing the Farm Equipment Union whose names I don't recall, a person representing the Furniture Workers Union, I don't [fol. 127] recall his name, Ben Gold. These were some of the people I recall having attended that meeting.

Q. Do you recall whether or not there was a representative of the National Maritime Union there?

A. I mentioned Al Lannon who was in that capacity. Gil Green was also there.

Q. How did you happen to go to this meeting?

A. I was notified by Maurice Travis that there would be a meeting in New York City which I should attend.

Q. And as a result of that notification did you meet Mr. Travis in New York City?

A. I did.

Q. And you were both in attendance at this meeting?

A. Yes.

Q. Were both of you there during the entire time of the meeting?

A. Yes.

Q. About what time of day did it start and terminate?

A. It started around 8:00 o'clock in the evening and lasted very late. By "very late" I mean midnight or somewhat later.

Q. Now, I believe you told us who John Williamson was. You mentioned the name Eugene Dennis. Who is Eugene Dennis at that time I mean?

A. He was General Secretary of the Communist Party of the United States.

Q. And who was William Z. Foster?

A. He was National Chairman of the Communist Party of the United States.

Q. And you mentioned a man by the name of Arnold Johnson. Who was he?

A. He was Ohio State Secretary of the Communist Party.

Q. I guess you have told us about Gil Green. Now, you mentioned the name Ben Gold. Who was Ben Gold?

A. Ben Gold was a member of the Central Committee of the Communist Party and an official of the Fur Workers Union.

Q. And Julius Emspak?

A. He was an official of the United Electrical, Radio, and Machine Workers Union.

Q. And a Mr. Matles?

A. He was also an official of the same union.

Q. Now, I didn't ask you about Mr. Emspak or Mr. Matles. What is the fact, if you know, as to whether or not those two men were members of the Communist Party?

A. Yes, they were.

Q. You mentioned a man by the name of Bryson I believe?

A. Yes.

Q. And do you know whether or not he held a Union position?

A. I am not positive whether he held one at that particular time or not.

Q. Do you know whether or not Bryson was a member of the Communist Party at that time?

A. Yes, he was.

[fol. 128] Q. Now, you mentioned that there were representatives of the Farm Equipment Workers Union and the

Furniture Workers Union there. Do you know whether or not they were members of the Communist Party?

Mr. Witt: I object to that.

The Court: I will sustain the objection.

Q. Mr. Eckert, do you know of your own knowledge whether or not this was a closed Communist meeting?

Mr. Deikman: Objection.

The Court: I will sustain the objection. It calls for a conclusion.

Mr. Kelley: It is within his knowledge, your Honor.

The Court: It is a conclusion on his part. He can testify specifically with respect to these. He has named a few people he recalled but not—there were others there beyond that.

Q. Who presided at this meeting, Mr. Eckert?

A. My recollection is that John Williamson presided.

Q. Now, will you, did Mr. Williamson make any statement in opening this meeting?

A. Yes, he did.

Q. And will you give the substance of the remarks made by Mr. Williamson at that time?

A. Mr. Williamson stated in substance that this meeting of Communists who held positions in the labor unions was called to decide on the matter of whether or not the Communists should advocate the signing of the non-Communist affidavits, that he, Williamson, and his associates were tired of having his door broken down on the ninth floor of the Communist Party Headquarters by Communist officials in unions who were clamoring for permission from the Communist Party to sign the non-Communist affidavits, that he and his associates on the top committee of the Communist Party had given authority for the Farm Equipment Workers to sign the non-Communist affidavits, but that this meeting was for the purpose of reconsidering that and to make a decision whether the previous authorization to the Farm Equipment Workers should be rescinded and also to make a decision as to what should be done on this question in the other unions represented by the Communist officials present.

[fol. 129] Mr. Witt: If the Court please, if I caught the beginning of the witness's answer, he said that John Williamson said that this meeting of Communists had been called. Now, the witness was on that witness chair a few minutes ago when your Honor sustained the objection to Mr. Kelley's question as to whether or not this was a closed Communist Party meeting, and it is my impression that the witness deliberately in his answer had Williamson say that this meeting, referred to this as a meeting of Communists. No person in the world could possibly remember the exact words at that time.

The Court: That goes to the question of the weight to be given the witness's testimony. He has testified that is what Mr. Williamson said, and, so, it will stand. Proceed, Mr. Kelley.

Q. Now, at this meeting, Mr. Eckert, did Ben Gold make any statement?

A. Yes.

Q. Do you recall the substance of what he said?

A. Yes.

Q. And will you state that, please?

A. The substance of Mr. Gold's remarks were that he felt it was an error for the Farm Equipment Workers to proceed with the signing of the non-Communist affidavits, that he felt it was an error in policy for any of these unions to do that, and that this particular union, the Fur Workers Union, was not experiencing the difficulties of these other unions but that, if at any time in the future his union would experience similar difficulties, the question, he would then reconsider the question but that he urged the people there to make a decision not to sign the non-Communist affidavits.

Q. Now, did the General Secretary, Eugene Dennis make any statement at that meeting?

A. Yes, he did.

Q. Do you recall what he said?

A. My recollection of the substance of Mr. Dennis's remarks were that he too felt it was a mistake to have given authorization to the Farm Equipment Workers to sign the non-Communist affidavits and that it should be changed and that no other union that the Communists exercised influence in or control should sign the affidavit.

Q. Now, do you recall whether or not William Z. Foster spoke at that meeting?

A. Yes, he did.

Q. And do you recall the substance of the remarks that he made at that time?

A. The substance of William Z. Foster's remarks were in substance the same as Mr. Dennis's.

Q. Now, did anyone else speak at that meeting in reference to the signing of the affidavits?

A. Yes.

[fol. 130] Q. And do you recall who it was?

A. Well, both of the representatives of the Farm Equipment Workers spoke.

Q. Do you recall their names at this time?

A. One of them was Grant Oakes. I don't recall the other's name.

Q. And do you remember the substance of the remarks of Mr. Oakes?

A. Yes.

Q. And will you state, please?

A. The substance was that his union, the Farm Equipment Workers, were experiencing considerable difficulty in Labor Board elections where they could not appear on the ballot because the law prevented the name of their union from appearing on the ballot because of their not having signed the non-Communist affidavits, and that, unless this policy was changed, they would have continuing difficulty of retaining those local unions in the Farm Equipment Union.

Q. Now, did others speak at that time?

A. Yes, there were others.

Q. Now, was there any decision made at that meeting?

A. Yes.

Q. What was the decision?

A. The decision was not to sign the non-Communist affidavits and that the Farm Equipment Workers should not proceed with the machinery they had set in motion to call a convention and sign the affidavits.

Q. Now, following the meeting did you see Mr. Travis?

A. Yes.

Q. Where did you see him?

A. We rode back to the hotel in a taxicab together.

Q. Now, during that time did you have any conversation with Mr. Travis in reference to what had transpired at this meeting?

A. Yes.

Q. Did he make any statement at that time?

A. Yes, he did.

Q. Do you recall the substance of his statement?

A. Well, the substance of his statement was that the decision had been made and that we would just have to live with it and not sign the affidavits.

Q. Now, Mr. Eckert, I would like to ask you whether or not following this meeting you attended a meeting at the home of Mr. Travis.

A. Yes, I did.

Q. And where did Mr. Travis live at that time?

A. In Chicago.

Q. And how long after the New York meeting if you recall was this meeting in Travis's home?

A. It was shortly after, I don't recall exactly, as near as I can recall a week, possibly two weeks.

Q. Now, who was present at this meeting?

A. Well, present were Maurice Travis, Gil Green, Al Skinner, Harold Sanderson, and I. I don't recall whether [fol. 131] Chase Powers was present. The general counsel of Mine-Mill was present.

Q. Now, was this in the nature of a formal or an informal meeting?

A. Well, if—

Mr. Deikman: Your Honor, I object to that. This word has no meaning that is probative in this Court: It calls for many varieties of ideas of what is a formal meeting and what is an informal meeting. I think the witness should just testify, and the jury can draw its own conclusion as to what kind of a meeting it was.

The Court: I think that is probably right. Without a definition of formal or informal you can ask what happened.

Q. Did anyone preside at the meeting at Mr. Travis's home?

A. Well, someone presided over the business part of the meeting. I don't recall just who did. It was not an official type of meeting. I don't recall if anybody could be designated as officially presiding.

Q. Now, were there discussions held at this meeting?

A. Yes.

Q. And did Mr. Travis participate in the discussions that occurred there?

A. Yes.

Q. Do you recall any statements or the substance of statements made by Mr. Travis at that meeting?

A. Yes.

Q. And will you state the substance of his remarks?

A. The substance of Mr. Travis's remarks was that we would have to go along in Mine-Mill and support the decision that had been made not to sign the non-Communist affidavits and that my division of the union, the Die Casting Division which was experiencing, was experiencing difficulties, that the Farm Equipment Workers were not being able to be on the ballot, that we would just have to do what these other unions were doing and carry out the decision by not signing.

Q. Do you recall any remarks by Mr. Skinner at that meeting?

A. Yes.

Q. And will you state the substance of those?

A. The substance of Mr. Skinner's remarks were about the same as Mr. Travis'. He added further that in the Diecasting Division of the union which I was heading, which he also was from that section of the union in Chicago, and stated that he was confident that the Diecasting Division would be able to beat off these raiding attacks by other [fol. 132] unions and that we should support the decision not to sign the affidavits.

Q. Now, do you recall any other discussion that occurred during that time at Mr. Travis' house between Mr. Travis and any of the other persons there?

A. Yes.

Q. And with whom did he discuss any particular subjects?

A. Well, he discussed this question with Gil Green who was there.

Q. Now, will you state the substance of the discussion between Mr. Green and Mr. Travis and state who said what in relating the substance of it to the Court and jury?

A. Mr. Green stated in substance that the Communist-led unions should not sign the non-Communist affidavit, and that the Communists should organize themselves inside to attempt to win these labor board elections by asking the people involved to mark the ballot, "No." It was stated in substance that it was extremely important for the Communists to maintain their position inside the labor unions and continue to work in them.

Mr. Travis directed an inquiry to Mr. Green, the substance of which was whether the teachings of V. Lenin as specifically contained in a booklet called, "Left-Wing Communism," stressing the necessity of Communists working inside trade unions, remaining in them at all costs, to use every artifice or device in order to remain in the labor movement, whether that policy wasn't applicable in the present situation, and Mr. Green relied in substance that it was.

Q. Now, do you recall any other conversation between Mr. Travis and Mr. Green at that time?

A. I don't recall other than the substance of the matter I have already stated here.

Q. I will ask you if you recall any discussion in reference to the Farm Equipment Worker's Situation?

Mr. Deikman: Objection; the witness has stated that that is all he recalls in the discussion, and since the witness no longer has anything further to say about the discussion now Mr. Kelley is testifying and attempting to tell the witness what to say. The question is leading.

The Court: I will overrule the objection. If the witness can recall, why, he can testify; if he can't, why, you better drop the subject. Do you recall anything?

The Witness: Yes.

[fol. 133] The Court: Go ahead then and answer it.

Q. Will you state the substance of that part of the conversation?

A. Mr. Travis inquired as to what procedure or method could have been used by the Farm Equipment Workers in

signing these non-Communist affidavits in view of the requirement of the law to swear that one is not a member of the Communist Party.

Mr. Green stated in substance that the law did not require one to swear that he had not been a member prior to signing or after signing, and also that Communists could belong to a Thursday afternoon social club or some other type of organization which wouldn't necessarily be the Communist Party, that the oath required would only refer to the Communist Party. That is the substance of the conversation.

Q. Now, Mr. Eckert, directing your attention to the spring of 1948, I will ask you where you were living at that time?

A. I was living at Avon Lake, Ohio.

Q. That's in the Cleveland area?

A. Yes.

Q. And was your position with the union the same at this time as you have previously testified?

A. At that time, yes.

Q. Now, did the Diecaster's Division of Mine-Mill have a meeting in Cleveland during the spring of 1948?

A. Yes.

Q. And do you remember what month it was?

A. Yes, April.

Q. Do you know what the purpose of the meeting was for?

A. Yes.

Q. And what was that?

A. To have the Diecasting Division of the Union—

Mr. Deikman: Objection, Your Honor. The question was what was the purpose of the meeting. Again this calls for a conclusion on the part of the witness.

Mr. Kelley: He was the head of the Diecasting Division.

The Court: If he knows; what is the source of his knowledge? Was there a call, or what happened to call the meeting?

Q. Did you call the meeting?

A. Yes, I did.

Q. And what was the purpose for which you called the meeting and did you so notify the members or delegates [fol. 134] in your call of the meeting?

A. At the—
Q. I think just a yes or no on that.
A. Yes.
Q. And what was the stated purpose of the meeting?

Mr. Deikman: What the stated purpose of the meeting was has no relation to the defendant unless he somehow connects it up.

The Court: This is preliminary, I expect. He can answer the question. I assume the Government will connect this in some way.

Mr. Kelley: It is preliminary, Your Honor.

The Court: All right; the objection will be overruled.

A. The stated purpose of the meeting as set out in the call of the meeting, as I recall, was to discuss the situation existing among the members of the Diecasting Division of the union who were on strike with the Precision Diecasting Company.

Q. Now, following the meeting of the Diecaster's Division, did you have a meeting at which Mr. Travis was present?

A. Yes.

Q. And about how long after the meeting of the Diecaster's Division?

Mr. Deikman: Just a moment. Apparently now Mr. Kelley has left the subject of the Diecaster's meeting. Unless he returns to it, which there seems to be no indication that he will, it is evidence that that whole meeting at which Mr. Travis was not present, at least there is no indication that he was, is irrelevant, and I move that that series of questions and answers be stricken.

The Court: I assume that the Government will connect up the meeting with something that you are about to have, is that right, Mr. Kelley?

Mr. Kelley: That's right, Your Honor.

The Court: You can renew the motion if they don't connect it up, but it will be overruled at this time.

Q. As I recall I was asking about how long after the Diecaster's Division meeting was this meeting at which Mr. Travis was present?

[fol. 135] A. My recollection is that it was within a few days, one, two or three days.

Q. And where was this meeting held?

A. In the Mine-Mill office in Cleveland.

Q. And who else besides yourself and Mr. Travis was present at this meeting?

A. Present was Irving Dichter, Pete Zvara, myself, Ralph Locke, Travis I believe I mentioned, Eric Hegstrom. There were some other staff members from the Diecasting Division of the union, and Paul Berdansky, and some—a few other people; I don't recall their names.

Q. Were there any other members of the Steering Committee present that you recall?

A. I don't recall whether Al Balint—or Al Skinner was there. Powers was not there.

Q. Powers was not there?

A. Not there.

Q. You have mentioned some new names, and unless counsel or the Court feel I should, I should like to ask you if those whom you have not previously identified as Communists, if the others in attendance at that meeting were members of the Communist Party at that time?

A. Not all of them.

The Court: That had all better be stricken, because it means nothing. The question and answer will be stricken.

Mr. Witt: I am sorry, we missed that.

The Court: I say, the question and answer were stricken because the answer was "some, but not all," which means nothing.

Q. Mr. Eckert, did anyone preside at this meeting?

A. Yes.

Q. And who was that?

A. Maurice Travis.

Q. And will you state whether or not Mr. Travis made any statement or remarks at that meeting?

A. Yes, he did.

Q. And will you tell the Court and jury the substance of his remarks?

A. The substance of his remarks was that the staff members of the Diecasting Division of Mine-Mill were present,

would no longer take instructions from myself as head of the Casting Division because of the resolution I had proposed to this Diecasting Division meeting urging a meeting with Phillip Murray, president of CIO, the signing of the non-Communist affidavits, and other matters; that my position in advocating such a resolution as that was contrary to the policy of the union and that the staff members there would in the future report to and take di- [fol. 136] rection from Irving Dichter, the regional director of the Diecasting Division of Mine-Mill in the New York, New Jersey area.

Q. Now, at that time was Irving Dichter a member of the Communist Party?

Mr. Witt: I object to that and move that the witness's last answer be stricken. There is absolutely no relevance to the issue in this case. The witness has already testified that this meeting was not a so-called Communist meeting, so, it was obvious the only other kind of a meeting it could have been is a meeting of union people, and what Travis said and what Travis did and what the witness said and what the witness did and whether Dichter was a Communist or not is absolutely immaterial.

Mr. Kelley: May I be heard on that, your Honor?

The Court: I think I will overrule the objection, but I haven't heard any connection yet between this meeting that Mr.—

Mr. Kelley: We will proceed to connect it.

The Court: —Mr. Deikman was objecting about.

Q. Now, were there any other meetings held by you and Mr. Travis in connection with your action and your proposals before the Die Casting Division meeting other than the one about which I have just inquired?

A. Yes, there were other meetings.

Q. And I will ask you whether or not there was—

The Court: Ask him where and when these were.

Q. When and where were these other meetings?

A. Well, another meeting was held following this meeting in Cleveland, in Chicago, Illinois, a meeting of the International Executive Board.

Q. No, Mr. Eckert. I am asking you if—was there a meeting at which you and Mr. Travis were present which related to the meeting that you just testified to in the Mine-Mill Headquarters?

Mr. Witt: I will object to that as entirely too leading.

[fol. 137] The Court: Well, the thing is extremely leading in the sense that you can ask the witness, he is the one that is testifying, not you, whether there were any other meetings and let him testify to what the fact is.

Mr. Kelley: When a person has attended a lot of meetings, unless you can direct his attention to a particular meeting, you can spend a lot of time.

The Court: Enumerate where the meetings were and where they were held, and, if you wish to direct his attention to a particular meeting, you may do so, to one of the meetings he has identified.

Q. Were there any other meetings other than you testified to in Cleveland about the time of this previous meeting that you just testified to?

A. Yes.

Q. And where was it or they held?

A. Well, the meeting in the Party office, or not the Party Office—the Mine-Mill office in Cleveland.

Q. Can you state when with reference to the meeting you have just testified to that this meeting took place?

A. My recollection is the same day just prior to or it might have been the night before.

Q. Now—

A. I don't recall exactly which.

Q. Excuse me. Who was present at that meeting?

A. There was Dichter, Travis, and myself.

Q. Do you recall whether there was anyone else present or not?

A. I don't recall anyone else being present if this could be called a meeting.

Q. Have you exhausted your recollection as to any meeting?

Mr. Witt: I will object.

The Court: I will sustain the objection. He has answered the question.

Mr. Kelley: It has always been my understanding of the rules of evidence that it is proper after a witness has exhausted his recollection to refresh his recollection.

The Court: Well, he has exhausted his recollection now he said. But you have to show surprise and several other matters before you can proceed on that basis.

[fol. 138] Q. Now, I believe you stated that this meeting occurred in the Mine-Mill offices, is that right?

The Court: You have an objection?

Mr. Witt: That question is somewhat ambiguous, just an objection as to form. What meeting is Mr. Kelley now referring to?

The Court: I assume he is talking about this meeting that the witness testified was just prior to, the night before the meeting that he has already testified in detail about. Is that right, Mr. Kelley?

Mr. Kelley: That's right, your Honor, at which Irving Dichter and the defendant and this witness were present.

Q. I will ask you one more question, Mr. Eckert. I appreciate you have had a long day.

The Court: I think we can proceed for a while longer unless the witness is ill or something.

The Witness: No, sir, your Honor, I am not.

Q. Now, do you recall whether or not Mr. Travis made any statement at this meeting?

A. A statement, I recall a statement.

Q. A statement. Will you state what that was, please, the substance of it?

A. The substance of this, of Mr. Travis's statement was that there was going to be a meeting of the Steering Committee, members of the Steering Committee were present, and this was one meeting I would not be attending. He stated that Joe Brant, Trade Union Secretary for Ohio, was in my office and wanted to see me.

Q. That was the substance of what took place at that time?

A. Yes.

Q. Now, following the Die Casters meeting in Cleveland in April was there a meeting of the Mine-Mill Executive Board following that?

A. Yes.

Q. Where was it held?

A. Chicago.

Q. Do you recall where in Chicago the meeting was held?

A. My recollection was it was held in a hotel, but I don't recall which one.

Q. About how long after the Cleveland meeting was the Chicago Board meeting?

A. My recollection is that it was held within one or two [fol. 139] weeks after that.

Q. Now, who was present at this meeting in the hotel in Chicago?

A. Present were the members of the International Executive Board, the general counsel of the Union, and myself, Harold Sanderson, Bernard Stern, Irving Dichter, Herman Clott, Ernest Love, and others. These are the names I can recall at the moment.

Q. Well now, I think to clarify it might be well to name who of the Executive Board were present.

A. Jack Clark, Maurice Travis, Wesley Madill, Chase Powers.

Q. Did you mention Mr. Dichter?

A. I believe I did, sir.

Q. And did you mention the name of Skinner?

A. I mentioned their names but not as members of the Board.

Mr. Witt: Just a minute, Mr. Witt (sic). We object to these—

The Court: I think the objection is sound. I mean Mr. Kelley can have the answer read back if he has any question about, but you may proceed.

Q. Do you recall any others that were present?

Mr. Witt: It is kind of confusing now. Mr. Kelley asked the witness to give the names of the members of the Executive Board.

The Court: That is what the witness is doing.

Mr. Kelley: Yes.

The Court: I don't know whether he completed it or not.

Q. Have you named the members of the Executive Board who were present?

A. I named the members of the Executive Board present that I recall at the present moment. There were members who were not members of the Executive Board too.

Q. And were there staff people present?

Mr. Witt: I object to that. The people he has named already before he named the members of the Executive Board were staff people, and all Mr. Kelley is doing now is continuing—

The Court: I think that's right, Mr. Kelley, he has named them.

[fol. 140] Mr. Kelley: All I am trying to do is to show who was there. This man has testified before, and he is doing it to the best of his recollection. It is along toward the end of the day, and I just—I have always been under the impression after one had exhausted his recollection you had a right to refresh his memory, but apparently counsel doesn't think so.

The Court: That is not what you are doing as I view it. Nevertheless, the witness has testified that those he has named he recalls, and he says there were others that he doesn't remember. Let's let it stand there.

Mr. Kelley: All right.

Q. Now, did Mr. Travis make a statement at this meeting?

A. Yes.

Q. And do you recall the substance of the statement made by Mr. Travis at the Board meeting?

A. Yes.

Q. Will you relate it, please?

A. Well, the substance of the statement made by Mr. Travis there was, he gave the meeting, the members of the International Executive Board and other people there a report on the Die Casters meeting we held in Cleveland which I earlier described, and he stated what had happened at the subsequent meeting in Cleveland with the Die Cast staff and urged the Board to reiterate is (sic) previous position in regard to not signing the affidavits and in opposition to the proposals that we had adopted in the Die Casting Division of the Union.

Q. Was there action taken by the Board at that time?

A. Yes.

Q. And do you know what the, was there a resolution passed, some formal action taken?

A. Yes.

Q. What was the nature of the action taken by the Board at that time?

A. A motion was passed reaffirming the previous position and rejecting the proposals of the Die Casting Division of the Union.

Mr. Witt: If Mr. Kelley is finished with this line, if the Court please, there is a motion we want to make.

Mr. Kelley: I don't know what you mean by "this line".

Mr. Witt: Let me make clear what I have in mind, and Mr. Kelley can advise the Court and counsel. If I have [fol. 141] followed the testimony of this witness correctly, from the time he began to testify about the meeting of the Die Cast Council in April down to the Executive Board meeting he has just testified about there is nothing in any of that testimony that is relevant to the issues in this case. All that the witness has testified about relates to a difference with respect to the policy of compliance or non-compliance with Taft-Hartley involving by the witness's own testimony both people he calls Communists and people he calls non-Communists, so that there obviously is nothing in any of this testimony that has to do with the issues in this case even if he were talking about 1951 and 1952. All this amounts to is testimony about a difference in a trade union with people on one side of the issue and other people on the other side of the issue.

The Court: It does relate to the policy obviously with reference to the filing of the affidavits required by the Taft-Hartley Act. The objection will be overruled. I think we will take a recess now until morning at 9:30, and, ladies and gentlemen of the Jury, you will bear in mind the admonitions I have given which are that you should not discuss the merits of the case among yourselves or the testimony given by the witness until you retire for your final deliberations, and you should not, of course, talk to any person about the case nor permit anyone to talk to you. You should not read newspaper articles about the case nor

listen to television or radio broadcasts about the case. So, with those admonitions you may announce a recess until 9:30 tomorrow morning.

In Chambers

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Did you have something you wished to take up with the Court, Mr. Witt?

Mr. Witt: On the question of the continuing objection, your Honor, may it be understood that we have a continuing objection to all testimony from any witness relating to the period before August, 1949?

The Court: Do you see any objection to that, Mr. Kelley?

Mr. Kelley: No.

[fol. 142] The Court: I think in effect—

Mr. Kelley: I think that is the way to handle it.

The Court: I have ruled several times on that point, and my impression is that there is already in the record a statement by Mr. Witt that they wish to have a continuing objection to the admission of any testimony on that basis, and I see no objection to letting the record so show now if it is not already in there. What else did you have?

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[fol. 160] KENNETH ECKERT, resumed the stand and testified further as follows:

Direct examination (continued).

By Mr. Kelley:

Q. Thank you, Your Honor. May it please the Court, ladies and gentlemen of the jury. Mr. Eckert, I think when we recessed last evening you had just testified about an executive board meeting in Chicago in the spring of 1948. Now, following that executive board meeting do you recall whether or not there was a meeting of the executive board held in Denver?

A. Yes.

Q. And do you recall about when that was?

A. To the best of my recollection I believe that was in May.

Q. Now, who was present at that meeting?

A. The officers and international executive board members of Mine-Mill & Smelter Workers, including Mr. Travis, myself, the members of the Steering Committee, and other members of the Mine-Mill & Smelter Workers who had been instructed to attend the meeting.

Q. Now, did Mr. Travis make any statement at that meeting?

A. Yes.

Q. Will you state what he said?

A. The substance of the remarks of Mr. Travis was in support of a resolution which had been introduced to the conference by he or—and his associates—and in opposition to another resolution which had been introduced by Wesley Madill and myself. That was the general nature, substance of the conversation.

Q. And was there action taken at that meeting in reference to the matter about which you have just opined?

A. Yes.

Q. And what action was taken?

A. The conference adopted the resolution advocated by Mr. Travis and his associates.

Q. Now, I believe you stated early in your testimony that you were in the Communist Party until sometime in 1948, is that correct?

A. Yes.

Q. And will you state when and how your connections with the Communist Party terminated?

Mr. Deikman: Objection. It is a matter of no relevance to this trial how his termination with the Communist Party arose.

[fol. 161] The Court: What is your theory on that, Mr. Kelley?

Mr. Kelley: May it please the Court, it is our theory that the manner in which this witness' severance occurred has a material bearing, and there are logical inferences that can be drawn from it as to whether or not the alleged

resignation of Mr. Travis actually took place. It is a circumstance that would bear on the main issue in the case.

Mr. Deikman: There is no reasonable way in which the experiences of this man can be attributed or related to an entirely different man, Your Honor.

Mr. Kelley: They were both members of the Communist Party, Your Honor, and I think that the jury can draw something from that. I think his objection goes to the weight.

The Court: I think I will overrule the objection; you may answer the question.

Q. If you will first state when and then the manner in which it was done.

A. In 1948 after this meeting in Denver which I just testified to, as near as I can recall I believe it was sometime in July following another meeting of the Die Casting Division of the Union.

Q. Now, how were you notified of the fact that you were no longer a member of the Communist Party?

Mr. Witt: Object to it. There is no foundation for that question; the witness hasn't testified that he was notified.

The Court: I am inclined to sustain that objection. Your initial question was what means the witness took or what process was followed in terminating his connection with the party.

Q. Can you amplify that answer, Mr. Eckert, as to what method was taken in severing your connection with the Communist Party?

A. Well, following my actions of violating party discipline I read in the official organ of the Communist—

The Court: Wait a minute.

Mr. Witt: Object to that.

[fol. 162] The Court: There is no evidence here what violations or anything else; I thought you were simply going to ask him the procedure that was availed of to terminate his connection with the party.

Mr. Kelley: That is it, and I think, Your Honor, the record shows that the meeting in Cleveland following the action of the Die Casting Division to comply with Taft-

Hartley, that the functions of Mr. Eckert as the head of the Die Casting Division were taken away from him and given to Irving Dichter.

The Court: That was union action, if my memory of the testimony is correct.

Mr. Kelley: It was the result of action taken by the balance of the Steering Committee, as I recall the testimony.

Mr. Witt: Mr. Kelley is incorrect.

Mr. Kelley: If I am incorrect I—

The Court: The Steering Committee was an agency of the Union.

Mr. Kelley: No, no, it wasn't, Your Honor.

The Court: It was a committee of the Union.

Mr. Kelley: It was a committee of Communists in the Union.

The Court: The personnel may be debatable, but the committee was a committee of the Union, but this answer that he started to give I don't think is a thing that opens up a whole field. I don't think it is proper. I understood what you were aiming at was to state what was done.

Mr. Kelley: That's just exactly what his answer will show was what was done.

The Court: The jury will disregard that last answer, and ask him that question and see if we can find out.

Q. All right. Did you receive any official notification [fol. 163] from the Communist Party that your membership had been terminated?

A. I read about my expulsion.

Mr. Witt: I move to strike that answer and this witness should be instructed to answer questions yes or no.

The Court: The motion is sustained.

Mr. Witt: And not to advise counsel how to ask him questions.

The Court: The motion will be sustained.

Q. Can you answer that yes or no?

The Court: The jury will disregard that.

A. No, I did not receive an official notification.

Q. Then how did you become apprised of the fact that you were no longer a member of the Communist Party?

Mr. Witt: He hasn't testified that he was advised in any way that he was no longer a member of the Communist Party.

The Court: I don't think he has either, Mr. Kelley.

Q. Did there come a time when you learned that you were not a member of the Communist Party?

A. Yes.

Q. Now, did you resign from the Communist Party?

A. No, I did not.

Q. How was your membership in the Communist Party terminated?

A. By expulsion.

Mr. Witt: Your Honor, I move to strike that answer, and I think I can show if I were permitted to examine the witness on voir dire that the implication he means to leave by that answer is completely incorrect.

The Court: No.

Mr. Witt: It shouldn't be left to cross examination.

The Court: I think I will deny the motion to strike and let the answer stand.

[fol. 164] Q. Now, Mr. Eckert, did there come a time when your affiliation with the Mine-Mill Union terminated?

A. Yes.

Q. And when did that occur?

A. In June of 1948, to the best of my recollection.

Q. And how did that occur?

A. By my proposing a resolution to the Die Casting convention to secede—

The Court: Wait a minute; I don't think that is responsive.

Mr. Kelley: Yes, I think it is, Your Honor. This is the way that it came about.

The Court: That may be what he thinks the reason was, but it was accomplished either by some action on the part of the Union or on his part by way of resignation or something.

Mr. Kelley: No, Your Honor, I can state to the Court that this is how it occurred; I mean, that he is answering the question properly.

Mr. Witt: Mr. Kelley shouldn't be testifying.

Mr. Kelley: May we approach the bench, Your Honor?

The Court: He is attempting, as I understood his answer, to explain why something happened. The question is how was his membership in the party and the union terminated, not the reasons for it.

Mr. Kelley: No, we are not trying to establish why, Your Honor.

The Court: He said he was separated from the Union sometime in June, 1948, and you asked him why.

Mr. Kelley: No, I did not; I asked him how it came about, the process by which it was done.

The Court: I don't know that that would be relevant here. The reasons, unless there were something stated in a formal nature, his conclusion—just take the analogy of somebody being discharged from a position. The fellow who was discharged may attribute an entirely different reason than the Union attributed for discharging him. [fol. 165] What I am trying to find out is was there any official action taken or—

Mr. Kelley: That's just exactly what the answer will show, Your Honor. May I recall to the Court that Mr. Witt in his opening statement made the statement—

Mr. Witt: This is argument to the jury; we object to it. Mr. Kelley asked to approach the bench out of the hearing of the jury.

The Court: The Court has spoken so the jury could hear.

Mr. Kelley: The jury heard the opening statement; it was to the effect that this man was fired from Mine-Mill. Now, this will show the manner, this is directly in the issue, and I can tell the Court if counsel will approach the bench I will make an offer of proof on it.

Mr. Witt: Mr. Kelley is entirely mistaken when he says that I stated that this man was fired. I stated that three of the other prosecution witnesses were fired, but I did not say that this man Eckert was fired.

(Discussion at the bench out of the hearing of the jury and the reporter.)

Mr. Witt: I am sorry; the witness can hear all this. I think this is improper.

The Court: I think the next time we are in chambers you can bring up this matter and we will discuss it then.

By Mr. Kelley:

Q. Now, Mr. Eckert, from your experiences in the Communist Party from 1931 to June, 1948, from your membership in the party during that period and from your attending classes in Communist Party schools during some of this period, do you know whether or not there was a policy on resignation from the Communist Party?

Mr. Witt: Object to it, Your Honor, on the grounds I thought we had cleared up in chambers. I think we better approach the bench on it.

[fol. 166] The Court: I think the form of the question better be changed and I will sustain the objection to the form of the question. I think you could simply ask him if he knows what the policy was without this preliminary foundation or question, or the preliminary statements in your question.

Q. Mr. Eckert, do you know whether or not there was a policy on resignation from the Communist Party during the time that you were a member of the party?

A. Yes.

Q. And will you state what that was?

Mr. Witt: Object to it, Your Honor, no foundation for it. Secondly, since this man has testified that he was out of the Communist Party in 1948, whatever policy the Communist Party had on this question in 1948, if it had a policy, is not binding on the defendant with respect to a resignation a year later.

In the next place, what the prosecution is seeking to do with this question is to usurp the functions of the jury, and have this witness decide for the jury on the matter of the defendant's resignation in 1949. The witness hasn't

even stated any experience in the Communist Party with respect to that, so even with respect to the period from 1931 to 1948 there is no basis r it.

Mr. Kelley hasn't asked him. what the written rules of the party were, if any, on the subject, what was contained in the party's constitution on the subject, if anything was contained in it.

Mr. Kelley: We can lay a lot of background, I mean foundation for the question.

The Court: I think, though, if there was a policy—start on that premise—or any rules or regulations, as distinguished from policy, with respect to whether or not a person could resign or couldn't resign or the procedure to be adopted for resignations, why, the best evidence, of course, would be the constitution or the by-laws or the controlling document of the party, and not someone's statement about that. Now, there has been no foundation. Secondly, assume there was a rule or was a policy in 1948 up until that time during the period this witness was a member of the Communist Party. What relevancy would that have to the [fol. 167] question of determining whether or not a resignation was effected in subsequent years?

Mr. Kelley: Well, your Honor, if we bring him up to June of 1948 and this resignation is in 1949, slightly over a year later, there would be a presumption of a continuance of that policy.

The Court: I am not sure about that, because I think it is incumbent upon the Government if it is in issue to show what the situation was in 1949, and I am not sure that that principle of continuance of the policy as it existed, suppose, to illustrate what the Court is thinking about, suppose that in 1948 there was a prescribed procedure for resignations whereby they could be given in certain form and have certain effects and the witness so testified, that certainly would not be conclusive on the Government with respect to what the policy was in 1949.

Mr. Kelley: We are not claiming that this is conclusive on the defendant, your Honor. This is merely part of our case, part of our evidence, and there will be more evidence covering other periods relating to the same problem.

The Court: Well, this witness admittedly, I gather from the foundation that has been laid and his own testimony does not profess to be acquainted with the policy in 1949 when the resignation we are concerned with here was purportedly given.

Mr. Kelley: Well, I haven't inquired of him as to that period. He was not in the Party at that time, and—

The Court: Well, I think until that is established, I think I will sustain the objection. They have a right to know how he would be acquainted with the matter, and also, as I say, the controlling factors it seems to me would be the rules or regulations or by-laws or something of the Party itself if such existed.

Mr. Kelley: Do I understand the Court to suggest that we should lay some foundation for the basis of his knowledge?

The Court: No, the very first thing is, if the question can be established with reference to—just take an ordi-
[fol. 168] nary situation, an action of, say, a corporation, if they have a constitution, if they have a set of by-laws that covers the matter, why, of course, no witness can testify orally with respect to the matter, the constitution and by-laws would be the best evidence. If there aren't any such or they cannot be obtained or some situation that developed which permits secondary evidence, then it would be admitted. But there has been no foundation laid on that basis.

Mr. Kelley: All right.

The Court: Secondly, I do not know, as I say, that this witness up to date, it may not be developed, but the critical question is what effect or what the situation was in 1949 with respect to this alleged resignation, and, if the witness is able to state what the rules of the Communist Party were at that time with respect to resignation after a proper foundation is laid, that might be proper, but I question whether his testimony about what the policy was in 1948 would be properly admissible.

Mr. Kelley: Well, your Honor, as I understand it, the problem is whether or not it is remote in point of time, is that it?

The Court: No, it is whether it is relevant on this basis. As I tell you, again, to illustrate what I am talking about, suppose there was—that the witness could testify in 1948 there was a certain policy with respect to resignations, the point I am making is that that would not have any relevancy whatsoever to the situation in 1949 unless there was a showing that there had not been a change in the policy.

Mr Kelley: Well, let me ask him the question about the rules and regulations and dispose of that first.

The Court: All right.

Q. Mr. Eckert, do you know whether or not the constitution or the by-laws of the Communist Party contained any provision relating to the policy of resignation from the Party?

Mr. Witt: That is during the period of 1948?

Mr. Kelley: In 1948.

A. I don't know what the constitution of the Communist [fol. 169] Party in 1948 may have said in regard to that.

Mr. Kelley: Well, your Honor, I would ask that we have an opportunity to get ahold of the constitution of the Communist Party which I think may be available to us before completing this witness's testimony.

The Court: You may do that, and I would add not only I think there should be an investigation with respect to the constitution but also as to any by-laws or whatever they are called, I do not know what they would be called, but I think it is perfectly obvious, if you had a written rule that was in force at any given time, why, that would be the thing that controlled.

Mr. Kelley: Well, I think—

The Court: If there is such a rule, unless it can be shown that the instruments are not available or something like that in a rather certain way, of course, the witness could not give an opinion any more than you could call somebody to testify what a statute of the United States said where the statute itself would be the best evidence.

Mr. Kelley: It is possible that the constitution and by-laws would not be available to us and it would be a little more difficult to get.

Mr. Witt: In any event, your Honor, the witness has said he doesn't know.

The Court: That is just what I was going to say to Mr. Kelley.

Mr. Kelley: We would like an opportunity to check that, and we would also like a further opportunity to discuss this matter in Chambers, if the Court please.

Mr. Witt: We would object to any further testimony from this witness on this issue.

The Court: We will make (sic) until Mr. Kelley makes his study and finds out what he wants to do, and he can recall the witness. Do you have any further examination of this [fol. 170] witness except for these matters?

Mr. Kelley: No, this will conclude this witness's examination, your Honor, as soon as we have had an opportunity to investigate this matter and discuss it with your Honor.

The Court: How much time is going to be involved in finding out about the matter? The primary thing that I am interested in, as I have said several times, is whether there is anything in the rules or the constitution or the by-laws written that would cover the matter of resignation or something of that sort. This witness says he doesn't know, and, if he doesn't know, there has to be a showing that there is not, and then there would have to be a showing that the instruments themselves were not available and some reason given for that inability to produce them, and then at that time, why, secondary evidence could possibly be received. How long is it going to be before you know what the fact is about that?

Mr. Kelley: Let me confer here just one moment.

The Court: Yes.

Mr. Kelley: Your Honor, I would suggest that we adjourn until after lunch because of the time it will take not only to make the search but for the conference in Chambers knowing how those are prolonged, and I am sure we can clear the whole matter up in that period of time.

The Court: All right.

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[fol. 191]

In Chambers

Court's Ruling on Admissibility of Testimony

The Court: Does anyone have anything to offer about this subject in addition to what was said before the recess?

Mr. Kelley: No, I think we have probably all said at least enough, if not too much, your Honor.

The Court: Well, during the recess period I have been doing a little reading about the matter and considerable thinking about it. In our approaches this morning I think, as the record will probably show, I thought for a while that probably this was out of the area of expert testimony, the area where a witness expressed an opinion on the basis of what I thought the witness might testify to something as a fact. To illustrate what I mean, I would think if a witness was asked, say, in a case, the firm of Smith & Company, or whatever name you wish to use that could be attached, employed people under twenty-one years of age, the witness could answer that they did not. That I don't think would be a matter of opinion. That would be testimony as to a fact.

Now, if you ask the same witness, "Do you know what the policy of Smith & Company is about hiring people under the age of twenty-one years?" and he testified the policy was that they hired no one under the age, why, you are confronted with two types of testimony. The first would be as to the fact; the second might come in the category of opinion testimony.

Now, from the trend of the questions here just before we recessed in open court, the questions propounded. I am inclined to think that this probably comes in the realm of expert testimony, because the question was propounded on a more or less hypothetical basis, and I don't know that the end result is any different. In the first place, if it is opinion testimony and expert testimony, why, of course, there has to be a proper foundation laid to qualify the expert before he is permitted to express an opinion. Now, [fol. 192] as I pointed out from the record this morning

in the prior trial apparently there were a considerable number of questions. I don't know the exact volume, but at least considerable testimony with respect to schools that the witnesses had attended and possibly other kinds of gatherings that were strictly limited to Communist Party matters, and that apparently was part of the foundation relied upon in the other trial for permitting him to answer the question about what has been called here as a policy of the Communist Party with respect to resignation from the organization.

Of course, the defense rather strenuously objected to this testimony, for instance, particularly the meetings in Moscow and things of that nature, as being of a highly prejudicial nature that even conceivably if admissible would have the effect of prejudice in the trial and would justify their exclusion on that basis, and so the Court, I think, more or less suggested to the Government that we might wait until this question arose and then decide what would be done about these questions that lay the foundation for an expert to testify as to a matter of opinion. That is about the situation we are in now.

Now, the evidence shows that the witness was a member of the party during the period he testified, at least with respect to Mr. Travis' connection with the party according to his testimony from 1941 until 1948 when the witness testified he was expelled. The evidence shows that the witness during that period of time was in close association with officials of the Communist Party. He has testified specifically in detail with respect to several what might be called policy meetings of the committee of the union, which he testified was composed entirely of members of the Communist Party, and of this meeting in New York of which something has been said; also of conversations with officials of the Communist Party at other times in connection with these meetings of the committee that has been testified to; so my own feeling is at the moment the witness is sufficiently qualified to answer this question, if it is otherwise proper.

The question of the ability of the witness to express an opinion, of course, is a question for the jury just like everything else in the case. The Court has to be satisfied prima

facie that the witness does qualify to express an opinion, [fol. 193] but the weight to be given that opinion is to be determined by the jury, and of course among other considerations the jury can take into consideration the knowledge of the witness about the transactions he purports to give an opinion on, and all of those things, so I think that subject is one that should properly be covered by instructions to the jury, and I think there has been a sufficient foundation here laid to permit the witness to testify as an expert with respect to this particular matter.

I think the defense would have a right, if they wish, to go into the question of where he derived this information, the source of his knowledge, and things of that nature, for the purpose and with the view of detracting from the weight the jury might give his testimony.

Now, with respect to the admissibility of the evidence, I am influenced very considerably by the Government's statement here that the matter will be connected up, and what I understand by "connection" is that there will be evidence from which the jury can infer that Mr. Travis was fully acquainted and had personal knowledge of this policy. I agree with the defense counsel that the membership which this witness contends was the status of Mr. Travis in itself would not impute to him any knowledge of policy or anything of that sort unless it had been expressly called to his attention, unless he subscribed to it and acted in pursuance of it.

Now, we all know that you cannot prove the whole case by one witness. The United States said that there will be evidence presented in the course of the trial that will show the connection, as they call it, or the fact from which knowledge can be inferred, and also, of course, of conduct which would amount to subscribing to the principle and following the principle, in fact.

Again I think that the objection will have to be overruled at this time on that basis. I might say at the moment I think there is something, we have been over it, I am not going to re-state it, about this meeting in New York, coupled with a subsequent meeting in Chicago in which Mr. Travis individually discussed with one of the officers

of the Communist Party the policy with respect to these affidavits. There could be some inferences down along the line the Government argues for in that connection.
[fol. 194] I am not passing that question because it is one for the jury, and naturally the matter should be left to the jury under proper instructions. Ie feel that there should be an instruction given along the lines of Mr. Deikman's statement this morning about there couldn't be knowledge imputed from the mere fact of membership alone, or something of that sort, along with one about expert testimony and expert witnesses and the manner in which the jury might consider their evidence.

Now, that brings us up to this 1948 date, being the time when this witness terminated his membership in the Union. Now, that standing alone if there was no other evidence in the case, of course, I question whether the Government could be said to have established the fact or apply that policy to something that happened in 1949, but I gather that from what Mr. Kelley said that with the other it will be connected up in such a manner that the Government will affirmatively show that the same policy that existed in 1948 continued down to the dates involved in the indictment period. I think this evidence in 1948 is pertinent along this line, because there has been testimony, for instance, about this New York meeting and this conversation I just mentioned of transactions within this period that relates to the closeness, if that's the word, or the degree of Mr. Travis' association with the Communist Party, and so the policy then in force with respect to this matter would be proper for consideration by the jury in determining ultimately, if it is established as the Government said it will, that the same policy existed in 1949, for the simple reason that if things were done in 1948 the same policy and the same conditions obtained on through a subsequent year, that what was done in 1948 or what the thinking was at that time would certainly have a bearing on what the situation was in 1949.

I have reached a conclusion that the Government may be permitted to inquire without laying any additional foundation as to whether the witness is acquainted with the policy

with respect to this matter, and then if he states affirmatively that he was—I think he already has gone that far—that he may then be asked what the policy was, and I think also that the record might show that the defense may, of course, have a continuing objection to this line of testimony, and they have, I think, objected very specifically to this particular question; but, I want the record fully protected so there will be no question about their objections.

[fol. 195] Mr. Kelley: I am not sure just how the record stands, whether the answer that he did know was stricken or not.

The Court: I don't think it was, but I think it would be entirely proper for you to renew the original question whether he did know, and then ask him the question with respect to what the policy was.

Mr. Kelley: May I ask him substantially the same question I asked him before?

The Court: I am not passing on the form of your questions; but, I wouldn't want to prescribe a certain form of question.

Mr. Kelley: There was some indication at one point that I should just ask him—

The Court: One other thing that I want the record to show that was discussed in the courtroom that I had, I think, more apprehension about than my reflection tells me was warranted. I thought that you had to make a prima facie showing to begin with that if a question of policy was involved, what the regular rules and regulations or constitution or something of the Party provided. The more I think about it the more I feel that that position I was advocating was not too sound, because if the practice was to proceed on a certain matter, even if there was some regulation or something of the company against it, then I think the evidence of the practice or the policy or whatever you wish to call it would probably still be admissible without reference to what the basic rule was. For instance, it is not hard to think of dozens of cases in which the principle might come up would be that if, for instance, there was a prescribed rate for certain work or something of that nature in some rule or regulation, or prescribed length

of service or something, and the fact was that over the years that rate had never been paid and that some other rate prevailed, I think extrinsic evidence with reference to what the actual practice and policy was would be admissible without reference to what the basic written constitution or by-laws amounted to, so I think I was probably unduly concerned about something that isn't a problem at all.

Mr. Witt: Your Honor, I think we have made our record [fol. 196] on it. I am not sure it has been fully expressed, but in any event we renew the objections that we made in open court this morning to the questions along this line. I am not sure I gave as a reason the best evidence rule. May the record show that that is an additional ground that we have for objecting to these questions.

The Court: All right, and the record may show, as I think it does sufficiently anyway, but so there will be no question about it, that the objections made by the defense are overruled.

In Open Court

KENNETH ECKERT, resumed the stand, and testified as follows:

Direct examination:

By Mr. Kelley (Continued):

Q. Mr. Eckert, from your experience in the Communist Party and from your membership in the Communist Party during the period from 1931 until the time you left the Party in 1948 do you know whether or not there was a Party policy on resignation from the Communist Party?

Mr. Witt: Your Honor, I suppose it is unnecessary for us to have the record show that we still have the same objection.

The Court: I will say to the Jury after hearing the presentation of counsel that I have overruled the objection of the defense to this line of interrogation.

A. Yes.

Q. And will you state what the policy of the Party was in that respect? A. The policy of the Party was that once having joined the Communist Party you could not leave without being expelled.

Mr. Kelley: That concludes the Government's direct testimony, your Honor.

[fol. 197] MOTION FOR PRODUCTION OF DOCUMENTS, ETC.

The Court: Very well. Mr. Witt, you may proceed.

Mr. Witt: If the Court please, before proceeding to cross-examine this witness we move that the Government produce to the defense all reports, statements, and testimony from this witness, Kenneth Eckert, in the Government's possession. We make the demand with respect to all reports or statements made to any agent of the Government under Section 3500 of the Criminal Code. We make the demand for testimony with specific reference to the testimony of this man, Kenneth Eckert, before the Grand Jury in this Court in 1954, before the Grand Jury in this Court in 1956, and before the Grand Jury in any other district court, any Federal District Court in which the witness gave testimony related to the subject matter of his testimony in this proceeding on direct examination.

Mr. Kelley: May it please the Court, I would like to make this statement: that as to the reports which we have that are producible under 18 U.S.C. 3500 that all of them contain some material which does not relate to the testimony of this witness on his direct examination. Now, as to the testimony of this witness other than Grand Jury testimony it is all a matter of public record, and as to the Grand Jury testimony the Government objects to producing that for the reason that under the Rules of Criminal Procedure the proceedings of the Grand Jury are secret and to remain secret unless there are compelling reasons for the Court in its discretion requiring the production of it and in that event it is necessary to lay a foundation.

Now, in my view of the matter it seems to me that there may be some legal problems here and that probably is something that should be taken up in Chambers.

The Court: Do you have available the reports that were demanded? Are they here in Denver?

Mr. Kelley: Yes.

The Court: And with respect to those it is your position that part of them properly should not be furnished in their present form to the defense, is that correct?

Mr. Kelley: It is our position that we have none which in their entirety relate to the testimony of this witness [fol. 198] on his direct examination and that they will have to be submitted in camera for consideration.

Mr. Witt: Whether we do it now or whether we do it later in Chambers, your Honor, we will have to discuss what is the subject matter of his testimony.

The Court: Certainly. You have asked for these reports. The Government has them, but they say there are certain portions that should not be made available to you. Under the provisions of this Section 3500 which was enacted recently as a result possibly of the pronouncements of the Supreme Court in the Jencks case I understand now it will be the duty of the Court to look at these reports and determine according to that Section in the first instance what should be made available and what should not, is that right?

Mr. Kelley: That is my understanding.

Mr. Witt: Just to preserve our record on that, your Honor, as we stated in Chambers, if there is no question in the mind of the prosecution that the reports or statements do relate to the subject matter of the witness's testimony on direct, then the defense is entitled to have those statements without their first being examined by the Court.

The Court: I understand their contention is that they are not in that category, is that right?

Mr. Kelley: That's right, your Honor.

In Chambers

COLLOQUY RE MOTION TO PRODUCE AND RULINGS THEREON

The Court: Now, do you have the reports available, Mr. Kelley?

Mr. Kelley: Well, we didn't bring them in at this time, Your Honor. I think we had a few; I wouldn't hazard a guess, maybe seven, eight reports that we were reviewing

this morning in connection with the scope of the testimony yesterday, and we came in here at this time to see whether we were going to have to produce grand jury minutes and what else.

The Court: When can you produce these statements?

[fol. 199] Mr. Kelley: If we have a half hour I am sure, or less, to do it. Now, this noon we had no time, I thought we could finish it at noon, but we just barely got back from lunch in time to get down here.

The Court: I notice one of your associates is missing. Is he up doing the checking?

Mr. Kelley: No, he is up getting another memorandum on a matter we thought might come up at this time.

The Court: Is somebody examining these reports, or are you making some progress in getting them ready?

Mr. Kelley: Not right at the moment, because as I understand it I have to make the statement myself as to their having any reports relating to the testimony.

The Court: The statute says:

"If the United States claims that any statement or order to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the Court shall order the United States to deliver such statement for inspection of the Court in comera." (sic)

Now, what is your understanding of the procedure under that section?

Mr. Kelley: The only thing that we want to be in a position to do is to state to the Court as to each report, or it was my thought that there are certain portions of the report we feel should be excised.

The Court: Does that go to each and every statement?

Mr. Kelley: Every one that we have that relates in any way to the testimony of this witness contains the matter on other subject matter.

The Court: How long do you think it would take you to complete your checking of them so that you will know?

Mr. Kelley: I can do it in a half an hour or less, maybe [fol. 200] fifteen or twenty minutes, if I could get an uninterrupted fifteen or twenty minutes I think I could do it, complete the job.

The Court: Now then, let's go to these other areas for the moment here, so that we can determine if possible at this time about these other matters. Now, first I will let the defense take them up in the order they want to and discuss the grand jury reports.

Mr. Witt: I think perhaps it would be more logical if when Mr. Kelley says he is going to produce, if he means by that he is referring only to documents in the possession of the FBI, then we want to discuss the remaining problem under 3500 first.

The Court: So there can be no mistake about it, the statute, as both of you know, provides that:

"After a witness called by the United States has testified on direct examination the Court shall on motion of defendant order the United States to produce any statement as hereinafter defined of a witness in possession of the United States or in relation to the subject matter to which the witness has testified."

Now, I understand that the documents you are referring to, Mr. Kelley, are the only statements or reports in the hands of the Government that pertain to the testimony of this witness, that's right, isn't it? In other words, what I think the implications are here, and I gather in the motion, we have talked about the FBI. The statute doesn't limit the demand to the FBI. It says "Any statements or reports in the hands," in the possession of the United States.

Mr. Kelley: In the possession of the Government.

The Court: Yes.

Mr. Vincent: If Your Honor please, I don't think the statute reads "or reports."

Mr. Kelley: "Statements."

[fol. 201] The Court: Any statement, yes, that's right; "reports" is up in (a), which hasn't anything to do with this.

Mr. Vincent: As defined in Section (a).

Mr. Kelley: In answer to your question, Your Honor, and in answer to Mr. Witt, to my knowledge the only statements made to the executive branch of the Government by the witness were made to the FBI, so that thes statements which we will produce and turn over to you will be FBI reports. If Mr. Witt's demand encompasses, as he indicated

a few days ago, statements made to congressional committees in executive session or something of that kind, it is our position that those are not encompassed within the purview of 3500, and we are not in a position to produce them, and I don't think that the United States' Attorney's office nor the Department of Justice can tell or order the executive branch of the Government or the legislative branch of the Government around, so we have nothing in that category.

Mr. Deikman: Your Honor, I think Mr. Kelley misunderstands what the point of our motion is in regard to reports other than FBI reports. I am speaking of our demand under Section 3500. We have demand or motion under the other areas of law, but speaking under 3500 and speaking only to that subject right now, we also move that the prosecution be required to produce any written statement made by the witness Eckert to the United States Attorney or any other agent of the Government. Now, we do so under the law which I have stated.

The Court: What do you mean by "any other agent of the Government"? I am trying to find out basically about the existence of any such items and what you are talking about. What do you encompass in your definition of an "agent of the Government," or does that include, as Mr. Kelley suggested, any statements they made to a congressional committee or something of that sort?

Mr. Deikman: I haven't checked with Mr. Witt on this, but that's not what I am speaking to (sic) right now.

Mr. Witt: I will address myself to that later.

Mr. Deikman: What I am speaking of right now is any [fol. 202] report or statement by this witness in their files made out to the U. S. Attorney or any agent of the U. S. Attorney or any other agent of the executive branch of the Government which they have in their possession. Now, as I said, this is not only a motion which is made under Section (e) 2 of the law, but Section (e) 1 as well, which does not require that it be a statement made to a Governmental agent, but any written statement made by the witness and signed or otherwise adopted or approved by him.

Now, our information of what is contained in the Government's file is rather sketchy, but we do have knowledge

of practice on the part of the U. S. Attorney, and we do have knowledge that there are written reports, or we assume that there are written reports made in the U. S. Attorney's office by witnesses. Now, if Mr. Eckert didn't make any such reports then, of course, they can't be produced, but if he did make a written statement to the U. S. Attorney, whether it be Donald Kelley or Thomas Mitchell or any other U. S. Attorney, we are entitled to its production.

Mr. Kelley: Well, in the first place they are talking about work product.

The Court: First let's develop what the fact is about the existence of any reports.

Mr. Kelley: Well, Your Honor, there is no such report as he is talking about, but if there was it would be in the realm of work product, and this 3500 certainly doesn't encompass the work product of Government lawyers.

Mr. Deikman: Well, I don't know whether I am talking to effect or not here. If there is no such report then we can leave to one side the question of whether it is work product. I think what we have to know from Mr. Kelley is: Is there any statement made by the witness Eckert to a U. S. Attorney or an agent for the U. S. Attorney? Let's cover that first.

Mr. Witt: A statement as defined in 3500.

Mr. Deikman: Yes.

Mr. Kelley: In the first place I don't think it is any of your business, and in the second place there isn't any such statement.

[fol. 203] The Court: You will take the second answer.

Mr. Witt: I was about to say Mr. Kelley should reverse the order of that.

Mr. Deikman: If it should develop on cross examination or at any stage of the trial that such is the case and such a statement was given and that Mr. Kelley is misinterpreting what I mean by "statement," then, of course, we will have the right to renew our demand.

The Court: We will proceed now on the basis that there are none in existence. Now then, pass to the next phase.

Mr. Deikman: Just one moment, Your Honor.

Mr. Witt: That's all right. May I address this to Mr. Kelley on this point before we leave it? Maybe we can clear it up.

The Court: All right.

Mr. Witt: Of course, when Mr. Deikman refers to a statement he is referring to a statement as defined in Subsection (e), which includes in paragraph two not only paragraph one, the statement made by him et cetera, but also paragraph two, a stenographic, mechanical, electrical or other recording or transcription thereof, et cetera.

Mr. Kelley: Let me ask you this: Are you referring to my witness sheet? Is that encompassed in your definition of what comes under this?

Mr. Witt: What do you mean by your "witness sheet"?

Mr. Kelley: The sheet that I work out for myself to determine the questions that I will ask.

Mr. Witt: As we read this that is defined as a statement by this witness.

The Court: I don't think it is, if I understand what you are talking about. If an attorney sits down and figures out a list of questions he is going to ask the witness I don't [fol. 204] see how that can be tortured into a statement at all.

Mr. Deikman: Mr. Kelley, was that recorded contemporaneously with the making of an oral statement on the part of the witness?

Mr. Kelley: I would be perfectly willing to show to the judge my notebook as to how I do this. The history of the act as it went through the Congress shows that that wasn't in the contemplation of Congress at all.

The Court: I am inclined to agree with that unless some further fact can be developed about it.

Mr. Deikman: Let's clear this up.

The Court: The definition you are relying on is a written statement made by the witness, signed, adopted or otherwise approved by him. I don't see how that would come under that category at all.

Mr. Deikman: We are talking about No. 2, Your Honor.

The Court: I think Mr. Kelley has answered this one. You haven't any stenographic, mechanical, electrical recording or other transcription, verbatim or substantially verbatim recital of any oral statement made by the witness to an agent of the Government and recorded contemporane-

ously with the making of such oral statement. Do you have anything like that?

Mr. Kelley: Other than FBI reports I have not.

The Court: That's what I understand you to say.

Mr. Deikman: Now, by "agent of the Government" the Judge is including there, Mr. Kelley, a U. S. Attorney, just for the purpose of argument at this time.

Mr. Kelley: I wouldn't know what other U. S. Attorneys might have, Mr. Deikman.

Mr. Deikman: We are talking about things that are available to the Government.

[fol. 205] Mr. Vincent: I think before we discuss what is in the possession of a United States Attorney we should determine in the first instance whether or not a United States Attorney's work product in any situation is encompassed in this statute. Now, as Mr. Kelley pointed out the legislative history specifically indicates that the work product of an attorney is not encompassed in the statute, and I think that's our first problem.

Mr. Deikman: I disagree with you, Mr. Vincent, on that. I am prepared to give the Judge the legislative history, and I am also prepared to give the Judge cases on what is meant by a "work product," and what the rules are in relation to it, but I think that that is getting ahead of ourselves. I think what we first have to determine is whether there is anything to argue about.

Mr. Vincent: I disagree with you, Mr. Deikman. I think that the interpretation of the statute should come first, but I leave that to His Honor.

The Court: If there is nothing in existence that would even come under their own interpretation of the statute, the problem would be solved right then and there. If there is something, why, that might present something else.

Mr. Deikman: Assuming that our interpretation of the statute is correct that the U. S. Attorney is an agent within the meaning of this act and any servant or agent of the U. S. Attorney is an agent within the meaning of this act, assuming that we are correct for the moment, is there in existence such material, such a statement?

Mr. Kelley: Well, again I come back to this question, pose this question: Mr. Eckert, for instance, testified in

El Paso, Texas in the Jencks case. He was handled down there by some Government attorney who worked out his own method of asking questions and so forth based on what Mr. Eckert told him, or based on reports of something else. I would have no knowledge of that, and that would be true as to the other places that he has testified, and I am sure that this Court isn't—

The Court: Let's be more specific. I still think what we are talking about is probably hypothetical. Now, I would [fol. 206] like to get specific here. I thought I understood, but apparently I haven't. Section (e) of this act says:

"The term 'statement' as used in Subsection (b, c, and d) of this section in relation to any witness called by the United States means, one, a written statement made by said witness and signed, adopted, or otherwise approved by him."

Now then, what in that category could possibly be in these work products. It isn't a written statement, I assume, by the witness, if some lawyer sits down and talks to the witness and makes a synopsis of what he is going to testify to, that wouldn't come in the category unless the witness signed it, and then it says, "Or otherwise adopted or approved by him." Now, what I would like to know as far as you gentlemen now representing the United States, if there is anything like that in existence other than the FBI reports?

Mr. Kelley: Other than the FBI reports and one statement that was—well, it is in our possession, and which we intend to produce. It would come within No. 1 under (e). We have one such, but it isn't—

The Court: You are going to produce whatever that is?

Mr. Kelley: Right.

The Court: Two says: "A stenographic, mechanical, electrical or other recording or transcription which is substantially a verbatim recital of the witness made to an agent of the Government and recorded contemporaneously with the making of such oral statement."

Now, do you know of anything like that other than what you intend to produce?

Mr. Kelley: No, sir.

Mr. Deikman: Assuming that "agent of the Government" means U. S. Attorney or anyone working for the U. S. Attorney—

Mr. Kelley: Well now, are you talking about the possession of them?

[fol. 207] The Court: It has to be a stenographic, mechanical, electrical recording or other transcription.

Mr. Deikman: Judge, the only thing Mr. Kelley is hedging about—

Mr. Kelley: I am not hedging, Mr. Deikman.

Mr. Deikman: —is the definition of "agent of the Government." What I am trying to get at, Your Honor—

The Court: What I am trying to get at, and I wish somebody would answer this, it is limited to a stenographic, mechanical, electrical recording or other transcription; whether it is made by an agent of the Government or somebody on the street. I am asking if there is anything like that around that you know of.

Mr. Kelley: I know of nothing other than the matters which we intend to produce to you.

The Court: That's what I understood your position to be, so if something develops later on in cross examination or something, I will listen to it, but I think we are just wasting our time talking about this phase of the thing, so now let's go on to the next thing. If you have any observations to make you can make them, but it seems to me that what is to be produced, whether made by an agent of the Government or anyone else, is limited with respect to stenographic, mechanical, electrical or other recording or transcription, which to me means like somebody sitting down at a deposition or by way of a formal statement to somebody. I understand the Government is producing all those that we have.

Mr. Deikman: We will leave this matter; I would just like to point out exactly what we had in mind. Sometimes it is the case—we don't know that it was the case in relation to Mr. Eckert, but sometimes it is the case that a U. S. Attorney in going over the case takes a stenographic, mechanical, electrical or other recording or transcription thereof of that witness' story about what happened. Using that the U. S. Attorney then prepares his case. Also I un-

derstand that it has been done by the U. S. Attorney's office here that a written statement is made by a witness and signed or otherwise approved by him.

[fol. 208] Now, we just want to make it clear that if there are such statements, even though it may not be the case in relation to Mr. Ecke., if there are in future cases, we include that in our demand for statements.

Mr. Vincent: What is that about future cases, Mr. Deikman?

Mr. Deikman: There will be other witnesses, I assume.

Mr. Vincent: You said future cases.

Mr. Deikman: Other instances.

Mr. Vincent: In the instant case.

Mr. Witt: In this case he meant, future witnesses.

The Court: Let's meet that if anything arises. At the moment I am satisfied from what has been said that there is nothing in that category, and when you produce these statements that you are talking about that those are all the statements the Government has.

Mr. Kelley: I have been assured that I have all of the statements of this witness given to a Government agent.

The Court: Now, what is your next point here?

Mr. Witt: Just to finish up on this one now, since we argue that an agent of the Government includes U. S. Attorneys and assistant U. S. Attorneys, and any lawyer in the employ of the Department of Justice or any other branch of the Government for that matter, we think it is incumbent upon the prosecution in this case to advise the Court whether there are any statements as defined in paragraph (e) of Section 3500 in the possession of the Department of Justice or any of the officers of the United States Attorneys.

Mr. Kelley: As I stated before, I wouldn't have any idea how other lawyers prepare their cases, and however they do it it is the work product and isn't encompassed within this, and I have made no effort to ascertain whether all of the lawyers that have worked on this case have proceeded in that manner. I have gotten everything that I know [fol. 209] about, any source that I know of has been checked out, and I am stating to the Court that I am producing

everything that comes within the category as I see the law. I don't think it includes work product.

The Court: I am inclined to agree with Mr. Kelley, and I doubt if it is necessary to pass on work product of attorneys. I question very seriously whether that is under the statute at all. The impossibility of the situation seems to me to be perfectly evident; and also the congressional intent seems to be perfectly evidence (sic). This statute, as I guess everyone knows, arose as a result of the Jencks case. The purpose is rather well defined. If there are any of these work products of lawyers around that may in the course of trying the case are, say, in chronological order the questions they intend to propound, and they make some notations about what they anticipate the testimony will be, I don't think that would come in the category here at all under (e).

Secondly, I think it is so obvious that Congress couldn't have had that in mind because the Court will take judicial knowledge of the fact that, for instance, Mr. Kelley's witness sheet that he calls it, or whatever he calls it, or anything these gentlemen have prepared here in connection with the trial, are not sent to any particular central agency. You would have these matters scattered all over the United States. There wouldn't be any practical or physical way at all of finding out about them, and I think the request that is being suggested here would be entirely beyond the possible scope of the statute, so I think we might as well proceed to some other phase of it.

Mr. Witt: Before we do, Your Honor, I want to make a statement in order to preserve our record so there will be no doubt about our position or Mr. Kelley's position. I am not sure I followed Mr. Kelley, but in any event it is our position that we are entitled to any statement as defined in paragraph (e) of Section 3500 so that we are not getting into what is or is not work product. We are putting it in terms of the definition of paragraph (e) of Section 3500. We are entitled to any such statement in the possession of the Government, any department of the Government, any agency of the Government, any agent of the Government, anywhere in the United States. Just one word in support of that, Your Honor, to indicate that we are not just shooting in the dark.

[fol. 210] Your Honor in the course of this case has heard references made to the Gold case. This man Eckert testified in open court in the Gold case, so it is fair to assume that he testified before the grand jury which indicted Gold.

The Court: Let's stay out of the Grand Jury field.

Mr. Witt: I am getting to that, your Honor. I have to get to it this way so you won't think we are just making noise.

The Court: All right.

Mr. Witt: I was just saying that since we know he testified in open court in the Gold case we assume or we infer although we could be wrong, but we infer that he also testified before the Grand Jury in the Gold case, the Grand Jury which indicted Gold. Now, in order to forestall any argument as to the definition of subject matter in Section 3500 in the Gold case in open court the witness Eckert testified about the defendant in this case, Travis, and specifically, he testified about the meeting in New York at the Trade Union Center in early 1948. He may have given other testimony about Travis in that case in open court, but, if he did, it slips my mind, but in any event we are referring to that, your Honor, to indicate to you that we are not just shooting in the dark, that we think there exists material which we are entitled to under the statute.

Now, if Eckert testified—

The Court: Let me get my thinking cleared up. Are you contending that you are entitled to the Grand Jury record or testimony—

Mr. Witt: I am sorry.

The Court: —either in this District or any other district under 3500 or what?

Mr. Witt: To finish up, I am sorry I confused your Honor by reference to the Grand Jury, but the point on the first issue is, since Eckert did testify in open court, the probability exists that he did make a statement as de-
[fol. 211] fined in paragraph (e) of Section 3500 to the United States Attorney or one of his Assistants in the District of Columbia, and under this statute it is incumbent upon the prosecution in this case to find that out if it is true and incumbent upon the prosecution to make the kind

of complete check which I indicated this statute requires. So much for that branch of it.

Now, again, not to continue the argument, your Honor, but to make our record, if 3500 is interpreted to exclude that kind of material which I have just discussed, then we say we are entitled to it under the Jencks case, and we are entitled to it as a matter of due process in getting a fair trial along the lines of Mr. Justice Brennan's opinion in the Jencks case.

If you want me to continue with the Grand Jury—

The Court: As I say, Mr. Kelley has categorically made answer to the question you propounded several times, and I am not inclined to go any further on the thing than we have right now, and as indicated with respect to statements I assume that these statements that are produced are all of the statements the Government has that come in the category as indicated in subdivision (e) of 3500.

Mr. Witt: Your Honor, I may have misunderstood Mr. Kelley, but Mr. Kelley stated for the record that the prosecution in this case has made no effort to check elsewhere with agents of the Government and with the Department of Justice to see whether there are any other statements as defined in Section 3500. That was Mr. Kelley's statement.

Mr. Kelley: Now, you are misstating the record on that.

Mr. Witt: It could be.

Mr. Kelley: I stated that I had made no effort to check the work product of lawyers that have handled this witness in other proceedings. The FBI has made a thorough search of all of its offices that have had any connection with any of the—well, with Mr. Eckert or anything that he has been connected with, and I have stated to the Court that I have in my possession those reports, and anything that has any, any report that has anything relating to the direct testimony of this witness will be produced and turned over to the Court.

[fol. 212] The Court: That satisfies the Court. So, let's go ahead with this next phase of it. That is the Grand Jury testimony, as I understood, or something. What is next?

Mr. Witt: As far as the Grand Jury is concerned, your Honor, our position is that Section 3500 has no bearing on that issue, and it is our position, as we stated to your Honor

last week, that the decision of the Third Circuit in the Rosenberg case, 245 Federal Second 870, which is the only appellate court ruling on the question which we are aware of since Jencks, supports our motion for the production directly to the defense of all Grand Jury testimony of this witness relating to the subject matter of his direct testimony in this case.

Mr. Kelley: May it please the Court, the Government has objected to the demand made by the defendant for the production of any Grand Jury minutes, because under Rule 6(e) of the Rules of Criminal Procedure it provides, "Disclosure of matters occurring before the Grand Jury other than its deliberations and the vote of any juror may be made to the attorneys for the Government for use in the performance of their duties. Otherwise a juror, attorney, interpreter or stenographer may disclose matters occurring before the Grand Jury only when so directed by the Court preliminarily to or in connection with a judicial proceeding or when permitted by the Court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the Grand Jury."

I think your Honor is familiar with the cases that hold that there has to be a showing, and it is my recollection that the cases which have permitted defendants to have Grand Jury testimony fall into about two classes: The first one is a case where it is a perjury indictment based upon statements made before the Grand Jury in which case it is necessary for the defendant to have it in order to prepare his defense, and the other cases are where the witness has made a statement on the stand or otherwise that he testified differently before the Grand Jury than he did on the witness stand, and it is contrary to the policy of the courts, and, further, in this case and in answer to the statement by Mr. Witt that he needed all of this stuff in order to have a fair trial, he has repeatedly stated both in open court and in Chambers that he has the transcript of the testimony of this witness before the CIO, which is not exactly verbatim, but it is a transcript of his statements in [fol. 213] regard to Mine-Mill and Mr. Travis, he has the

transcript of the Jencks case in which this witness testified, he has the transcript of this witness in the Gold case, he has the transcript of the witness before the McCarran hearings in Salt Lake City, and he has the transcript of this witness's testimony in this case on the previous trial.

The Court: Of course, all we are talking about now is the Grand Jury.

Mr. Kelley: But I am pointing out—

Mr. Witt: And the SACB I am talking about.

Mr. Kelley: This summer he cross-examined him extensively before the SACB.

Mr. Witt: I have one more so the record will be complete. I also have this man's testimony before the NLRB in the so-called decompliance case against Mine-Mill.

The Court: Have you seen this Rosenberg case?

Mr. Vincent: Yes, I have, and in regard to that Rosenberg case I would like to state that it was mentioned specifically in both Houses of Congress when they considered enacting Section 3500 they stated, and it is in the Congressional Record, that the Rosenberg case was one example of a misapplication of the Jencks decision which would disclose Grand Jury minutes, a proceeding heretofore unheard of, and they said that showed one of the reasons demonstrating the need for legislative enactment.

Mr. Witt: Now, Mr. Vincent, excuse me, your Honor, I think I can answer both Mr. Kelley and Mr. Vincent. If I followed Mr. Kelley, he concedes despite the reference to the secrecy Rule 6 (e) that there are circumstances under which the defense in a nonperjury case is entitled to Grand Jury testimony, and he has to concede it because there are just too many cases indicating it. He is referring to cases, and just along the line of them is the one in the Second Circuit which holds that, if on cross examination you show an inconsistency or contradiction and the witness indicates he might have testified differently before the Grand Jury, then, his Grand Jury testimony is made available to the Court for [fol. 214] inspection to see whether there is an inconsistency or contradiction before it is turned over to the defense if there is.

Now, that was precisely the issue in the Jencks case with respect to FBI reports, your Honor, you will recall. The pre-

vious practice then best exemplified in the Second Circuit was to require the defense to show a contradiction or an inconsistency on cross examination, then have the FBI reports turned over to the Court, examined to see whether they support the position of the defense, and, if they do, turned over to the defense.

Now, what the Court said in the Rosenberg case was that the thinking of the Supreme Court in the Jencks case with respect to FBI reports was also applicable to Grand Jury testimony, and the Court in the Rosenberg case specifically referred to one of the recent cases in the Second Circuit which exemplified the old practice. So, the Rosenberg case is authority for the proposition that the Jencks case assimilates Grand Jury testimony with respect to this problem, to the problem of FBI reports.

Now, as far as the Congressional history is concerned Mr. Vincent is correct that you will find in the Congressional history indications by one or more of the committees or one or more Congressmen or Senators, cases of disapproval of the Rosenberg case, but in any event that is not pertinent on this whole subject, your Honor, because the legislation which came out of that discussion simply didn't deal with the problem of Grand Jury testimony. Even though the entire Congress may not have liked the Rosenberg case they did nothing about it when they passed Section 3500, and they did nothing about it in any other statute, so, reference to Congressional disapproval of Rosenberg is beside the point and irrelevant. All it means is that a few Senators and a few Congressman (sic) indicated that they didn't like the case, and that doesn't advance us any.

The Court: I do not know what there is in the Jencks case that would extend the rule to Grand Jury testimony myself. If there is anything in that case that supports your argument, I would like to see it. I am inclined offhand to agree with these few Congressmen that talked about the thing. I do not believe the principle of the Jencks case extends to Grand Jury testimony at all.

[fol. 215] Mr. Witt: May I say this one word on it?

The Court: Yes.

Mr. Witt: Of course, your Honor is right if what your Honor says is that the opinion does not refer to Grand Jury

testimony. That is true. But what the Court said in Rosenberg and what we say is that the philosophy expressed in the Jencks case is just as fully applicable, to-wit, that it is the responsibility of the Government to see that justice is done, and that means that, if the Government has anything in its possession which helps the defense or indicates that this man is a liar or perjurer, it is the responsibility of the Government to make that available to the defense whether it is Grand Jury testimony, FBI reports, or anything else, and, as we read Jencks, it is based not only on the supervisory authority of the Supreme Court over the lower Federal courts as far as the rules of evidence are concerned but we read it as enunciating constitutional doctrine under the Fifth and Sixth Amendments, and we think denial of this right on our part to examine this man's Grand Jury testimony before we cross-examine him would be a denial of constitutional rights.

Finally, I do not think you would find, at least I cannot, any witness in my experience in connection with whom this Grand Jury testimony is more pertinent and where it would impose an almost intolerable burden physically and mentally to the defense to require the defense to take him through every item of his testimony in this case and in previous cases and try to drag out from him what he testified to on each of those subjects before each of the Grand Juries and to try to show an inconsistency or contradiction.

On that subject finally Mr. Vincent is wrong, if we get to that point, about our foundation, because Mr. Justice Brennan indicated in the Jencks case that a sufficient foundation is laid if the witness says he doesn't remember as most witnesses will, of course, say. You get very few witnesses who will say, "I told a different story before a Grand Jury than I told in this courtroom," of course. But we will get out of this man, and he has no alternative, because he has given so many inconsistent versions of different incidents and different people for the last eight years in seven proceedings we know about, we will get out of him that he doesn't remember, and I do not think we should [fol. 216] be here for two weeks dragging that out of him before we find out what he testified to under oath and secretly.

The Court: Well, my impression is, as I have just mentioned, I do not believe that the Rosenberg case extends the theory of the Jencks case and the practice that the Jencks case said was proper with respect to statements made by the witness, pre-trial statements to the FBI I think were directly involved in that case, I do not think there was anything in the case to extend the rule of the Jencks case to the testimony before a Grand Jury. To that extent I will agree with this decision from the Third Circuit. I recognize that is a Court of Appeals decision, but I do not think there is anything to warrant the conclusion they reach with respect to the extension of the doctrine of the Jencks case in this particular Grand Jury testimony. So, I do not think we are in any different position with respect to that than we were before the Jencks case or before 3500. I believe everyone concedes it doesn't touch the subject of Grand Jury testimony at all.

Now then, that gets us down to the basic law on the thing, and I do not believe there is any showing here that would justify the production of the Grand Jury testimony. I do not profess to be expert particularly on the matter, but we have had a number of cases around here where there have been requests, but my impression is there is nothing at the moment before the Court anyway that would justify the Court in asking for production of the testimony of the Grand Jury.

Mr. Witt: Just to make our record on it, I have said everything I want to on the other issue—

The Court: Yes.

Mr. Witt: Since your Honor has denied the motion for production of Grand Jury testimony directly to the defense, we move that the Government produce to your Honor for your Honor's examination the Grand Jury testimony of this man, and, if your Honor finds inconsistencies or contradictions between his Grand Jury testimony and his testimony in open court in this case, then, that your Honor turn over that Grand Jury testimony to the defense for further cross examination.

[fol. 217] Mr. Kelley: May I address myself to that, your Honor?

The Court: Yes.

Mr. Kelley: In the first place, the procedure suggested by Mr. Witt is fraught with many difficulties. To begin with, I doubt if this Court has jurisdiction to compel the District Court or the Court of Appeals of the District of Columbia or any other District—

The Court: Let's not get into that. Let's confine it to our own district here.

Mr. Witt: Here at least there is no question he has testified before the Grand Jury on two occasions.

Mr. Kelley: Now, as to the second time he testified that is in a case which is pending on motions before the Court. In the first case it is my position that it is a matter within the discretion of the Court, but in view of all of the prior testimony that this man has given relating to the same, many of the same incidents about which he testified here it would be placing an undue burden on the Court to have to examine and compare that with the testimony on this trial or the testimony on the previous trial, and the man has testified so many times that there just could not be a denial of due process in producing his testimony to see if he left somebody out one time and put him in another time or some little minor immaterial inconsistency which Mr. Witt continues to harp on.

The Court: Well, tell me something factually. I gather from what you say this witness didn't testify before this Grand Jury in connection with this indictment that we are on trial or not?

Mr. Kelley: Yes, he testified in this and in the Pezzati case.

The Court: And the second one was what we call the Pezzati case, the second instance when he testified?

Mr. Kelley: That's right, your Honor.

The Court: Now, I am not sure, as I say, I do not profess [fol. 218] to be an authority on this subject, but I doubt if there has been sufficient showing to justify the production. I would be inclined to overrule the motion on that basis right now with leave to represent if something shows up that does justify it. My impression about those cases in which there has been a production there is some tangible basis, and it is somewhat inconsistent with what the practice is, even the old practice with respect to statements, and I

assume it arises out of the nature of Grand Jury proceedings generally which have a little more veil of secrecy thrown around them than some other transaction.

My memory on those cases where the testimony is produced even for examination by the Court there has to be some rather definite and certain likelihood of material contradiction or something like that to justify its production.

Mr. Witt: I think your Honor is right. I cite the Rosenberg cases. Aside from the Rosenberg cases, those are the cases I mentioned, particularly those in the Second Circuit, what the procedure has been, and that would be our next position which we do not have to make now. The procedure has been, if you show an inconsistency or contradiction, then you can make your request for the Grand Jury testimony, and then it is made available to the Court for inspection first. But we were taking an intermediate position first in view of the nature of the problem of this witness and suggesting that without putting the heavy burden on us of cross-examining him for days as to each of these incidents and each of these names he mentioned that your Honor could examine the Grand Jury testimony now.

The Court: I think I will deny your motion on the basis I have just indicated with leave to represent if the circumstances would be such as to warrant the production, and we will give consideration to it then.

Mr. Witt: So there will be no question in the record, then what we will have to do as we take him on cross examination as to each item of his testimony on direct examination is ask him whether he gave testimony on that matter before a grand jury.

The Court: I would not attempt to prescribe the exact procedure. I think there are a number of cases which point out what happens. My memory is not sufficiently definite to know exactly how the matter arose, whether there had to be an admission that he testified on the sub- [fol. 219] ject to start with and then—well, I don't know, but whatever the general rule is you pursue it. If the facts develop that warrant a consideration of it, I will give it consideration again.

Mr. Kelley: I would like to make this statement again to clear up the record, and that is this: that Mr. Witt's demand for grand jury testimony is to assist him in the cross examination of the witness and it is not for the purpose of assisting in the defense of his client, to prepare his defense.

The Court: I do not quite agree with your area of definition. What I infer—

Mr. Kelley: There are cases that make the distinction.

The Court: To put it another way round he thinks it is for the purpose of impeachment I expect.

Mr. Kelley: He wants it to use for impeachment purposes on cross examination, isn't that right?

The Court: I have overruled the motion, and I want to look up the law if the thing comes up again, because there are a lot of cases on the subject, but I am not sure and I am not saying what the law is. I think some of them have ordered the production where it is for the purpose of impeachment I would say on a very vital question, but somehow the question was developed so you knew what you were looking for when you looked at the testimony. In other words, it is not a general search for inconsistencies. There is something vital in the testimony that is inconsistent not only with the testimony but with the indictment of the defendant or something like that.

Mr. Witt: Mr. Kelley is anticipating, but I think, if we show enough instances of inconsistencies, even though he calls them minor, trivial, I think we are entitled to the production.

The Court: We will pass on it when it comes up.

Mr. Kelley: All I wanted to do was give you a little [fol. 220] memorandum, I think we have a copy to give counsel on this grand jury question.

The Court: I will reserve this, because I have ruled on it, and I might say further, as I said the other day, and I am sure about that short of a natural search, I don't believe this Court has any jurisdiction to tell another District Court in another District to produce the grand jury testimony. In fact, I think the matter was passed on somewhere very recently. I saw a case on it where it was held, and I do not know the level of the holding, that the Court, say, a

District Court in this District had no jurisdiction to compel, say, a District Court in Kansas or somebody else to produce the grand jury testimony. I believe it was a case like that.

Mr. Witt: That may be. But just to keep the record straight it is our position that in order to get grand jury testimony given in another district it would not be necessary for the Court to go to the Court in the other district. We take it for granted that the Department of Justice or its agents have copies of grand jury testimony.

The Court: I don't believe they can produce it without some authority or give it to anybody. I don't know. But we are reserving judgment on that. I just mentioned that. But what I would like to talk about now before we get into any more propositions of law is on this timetable business. I have let this jury wait around an hour or so now. You have to get these reports, and how long is it going to take me to look them over?

Mr. Kelley: I think the judge could look them over in an hour.

Mr. Vincent: No, sir.

Mr. Kelley: Couldn't he?

Mr. Vincent: I don't feel he could. It is possible if he reads very rapidly.

The Court: No. I want to do it in a deliberate manner.

Mr. Vincent: To assimilate them he has a couple of hours of work. That would be my estimate.

[fol. 221] The Court: Even if you get them in the next half hour, I could not get through with them this afternoon, and we were talking about, well, the definite deal was that we would adjourn at noon tomorrow over to Monday, and I am thinking that the thing to do is to get the jury in there, and I think I ought to tell them briefly about this problem here, that I have to look these matters over and so forth and then also tell them about the previous arrangement when we started the trial of the case. I do not think I will mention Mr. Witt's name, but I see no objection to saying that one of counsel since the case was set for trial, had a very important engagement requiring their being in Chicago and that we had a plan and agreed that we would recess in which event we would re-

cess on Thursday at noon and tell them at best we could only get in an hour or two before Thursday noon, and, therefore, we were going to recess until Monday morning. Is that all right to say something like that?

Mr. Witt: Yes.

The Court: Is that all right with you?

Mr. Kelley: Yes, I think probably following our production and after you have examined them and decided what if anything should be excised, then you will advise us and then—

The Court: What I wish you would do on that, you say it will take a half hour or so, you can get them down here yet this afternoon, and I will start working on them this afternoon, and I am going to try, if I possibly can, after I look at them to decide what is to be done before Mr. Witt leaves.

Mr. Witt: May we discuss this problem off the record?

(Discussion off the record.)

In Open Court

The Court: Ladies and gentlemen of the jury, as I think you all understood from the proceedings that we had just before recess, the defense has requested the production of certain statements the witness on the stand has made to agents of the United States Government. The Government has these statements. They are at the moment engaged in getting them arranged, and things of that sort, and as [fol. 222] you heard Mr. Kelley say, it is claimed that the statements contain matter that does not relate to the subject matter of the testimony of the witness on direct examination.

The statute provides, Section 3500, that:

"If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the Court shall order the United States to deliver such statement for the inspection of the Court in camera."

That means for private examination. The Government at the present is presently engaged in assembling these reports and will hand them to the Court for the Court's determination in the first instance with respect to whether or not the testimony or the statements contained in them relate to the subject matter of the testimony of the witness on direct examination. It is perfectly obvious from what I am told that that cannot be completed this afternoon.

Now, it happens that when this case was set for trial, which was last Monday, the date was agreed upon by everyone in view of the fact that witnesses and counsel have come from considerable distance. Shortly after that time another meeting in Chicago was set which requires the presence of one of counsel there Friday and Saturday of this week, so at that time it was agreed by everyone that we would recess on Thursday; that's tomorrow noon, over until Monday. Of course, I think I told you before we do not hold court on Friday, jury trials, because the Court on that day has arraignments set and motions and things of that sort, and our normal week of court for juries is the first four days in the week, so under that previous arrangement we would in due course recess tomorrow at 12:00 o'clock over until Monday.

Now, it is estimated—the Court hasn't seen these reports—but, the Government estimates it will take several hours for the Court to look them over, so that we at the very best would not be able to get in any more than an hour of court tomorrow and would have to recess at 12:00 o'clock to enable counsel to go to Chicago, so I am going to recess now until Monday morning rather than have you come down here for an hour or so tomorrow, and I [fol. 223] trust that next week when the matter proceeds that we can proceed with a fewer number of recesses and with more continuity than we have had in the last day or two. These legal questions, as I say, must be disposed of, and they are inherent to the case, but I think we are getting them cleared up, so from here on we probably will make better time.

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In Chambers

The Court: Was there something else that someone wanted to discuss? I think you had the floor.

Mr. Witt: No, I think we were done.

Mr. Kelley: I think we were; we can get busy on that and try to get those to you.

The Court: We better let the Government get busy and try to get that down here to me in the next half hour or so and I will start working on it. As I say, I intend to take it home and I will let you know, I will call you up and advise you when I want you to come over.

Mr. Witt: On our side will you advise Mr. Deikman?

The Court: Whatever is most convenient; would it be convenient if I just advise Mr. Deikman?

Mr. Deikman: Yes.

Mr. Witt: And you think it should be about 10:00 o'clock?

The Court: That's my hope, and I will try not to make it later than that. I imagine it might be earlier; I imagine I will be calling you sometime between half past 9:00 and 10:00.

The Court: I have gone over the statements that the Government produced pursuant to the motion of the defendant, and I have spent considerable time looking them over. I am satisfied that portion of these statements or records as they have been called must be withheld from the defendant under the provisions of Section 3500, be- [fol. 224] cause they contain no matter that relates to the subject matter of the testimony of the witness, as I see it, his testimony on direct examination.

Now, as I understand the procedure, the matters withheld, of course, are retained, and in the event there is an appeal they are then to be considered by the appellate court. I do not know any way of identifying these or anything else by way of exhibit numbers or anything of that sort. Does anyone have an idea about that?

Mr. Kelley: I think you put them in an envelope and seal them and probably make some notation, something that will show that those were the ones which were not given to the defendant, any record that will indicate that, wouldn't you say so?

The Court: I was just wondering, because they would not be in the nature of an exhibit or anything, but what I have done, for instance, here is one group that is bound together, and my conclusion is that none of this group should be given. I have attached for my own information a memorandum on the front of it to give none of this group, and I think I will put my initials on it and put the date on it. Today is the 16th I think.

I come to the next matter, and I think this one should be given except certain paragraphs that I have indicated on my memorandum that should be stricken out. Before we leave the matter I wish whoever is doing the clerical checking, I wish they would see if it is clear enough to show what portions should be excised.

Mr. Vincent: I think I can do that, your Honor.

The Court: You can see if that is sufficiently clear so you can prepare it. You can look at it. What were you going to say?

Mr. Kelley: It is my understanding too that as to those which are, portions of which are excised that the complete statement will also go in this sealed file which will be part of the record on appeal.

The Court: I assume that's right. I assume what will happen is that you will take these up, eliminate the por-
[fol. 225] tions that I have thought should be withheld from the defendant, and then furnish them with the copies leaving those portions out, but that the original, the whole original document will be in such form that it may be submitted to the Court of Appeals and will be sealed. I think the statute says, "If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge."

So, the entire text would have to be submitted by the Government in accordance with what my views are with respect to the elimination of the part that should be withheld to show the true situation.

Mr. Kelley: Yes, that is my understanding.

The Court: I am assuming you are objecting to withholding any part of the statement.

Mr. Witt: We will make our record as soon as your Honor is finished discussing the statements.

The Court: Now then, the next matter, and I think it is proper to inquire a little about this from both of you, there is a part of the next group or next binding on the statements submitted, there is attached a transcript of the testimony of Mr. Eckert before the CIO Executive Board at Washington which culminated according to the memorandum here in the expulsion of the Mine, Mill & Smelter Workers Union from the CIO. Now, this is a transcript of that testimony. Does that come within the category of statement? It was submitted, as I understand, by Mr. Eckert to the Government.

Mr. Kelley: That is my understanding, your Honor. We had some doubt about it, and because we had the doubt we thought that it should be resolved by your Honor.

The Court: Well, do you have any contention about it? Have you a copy of this?

Mr. Witt: I do not know what it is. If it is what I think [fol. 226] it is, we do have a copy.

The Court: I read it over, and the reason I suspected that you might have a copy. I saw in the course of the proceeding that it was stated by the Chairman, I think that was his title, a gentleman by the name of Potofsky, that the copy was to be made available to the Union, a copy of this transcript, and they were given an opportunity to answer it or something like that, and this is a transcript of Mr. Eckert's testimony before that Committee, and I wondered if there was any other basis for the impropriety of furnishing it. I do not know whether it comes strictly in the category of the statute.

Mr. Kelley: I think, your Honor, that it would be our position that it is not furnishable under the statute. It does not come within the statute, and, we, therefore—

The Court: It is pretty close. I wish you would think it over. I do not want to get any reversible error about the thing in here, because the statute in defining statement it says, "A stenographic, mechanical, electrical, or other re-

cording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement." Then, the other part is: "A written statement made by said witness and signed or otherwise adopted or approved by him."

The fact is, as I gather from the submission, this wasn't made to an agent of the Government but it was submitted to an agent of the Government by Mr. Eckert.

Mr. Witt: I take it, your Honor, on that the covering statement though whatever it is you have there must make some reference to it, so, I take it whether the language was used or not that that CIO testimony was incorporated by reference, so that would be part of the witness's statement.

Mr. Vincent: This was a statement actually, your Honor, not made to an agent of the Government.

The Court: I know that, but what I am thinking about, and that is the reason I brought it up, I do not want to get into a question of reversible error here. What the fact is, [fol. 227] as I understand, is that this statement was furnished with the original statement, apparently an original transcript of the testimony was furnished by Mr. Eckert to the FBI, and this is a photostatic copy made by the FBI, all of the statement that he furnished. Now, where he furnishes a statement, a transcript to an agent of the United States of his own testimony it would seem to me to be pretty close to the definition of the statute.

Mr. Kelley: Well, that bothered us when we were reviewing the file, and that is the reason that we did submit it, and, if there is any doubt about it, we would I think in this instance rather err on the side of producing it.

The Court: I think then that they should be given that. There is attached to this actual transcript some other matter that I think should be given with certain eliminations. Now, I have tried with this note on here to indicate what should be eliminated. As I say, I wish you mechanically would look at these and see if they are clear as to what I intend should be eliminated.

Mr. Vincent: Might I just say on the transcript it is on the pure mechanics of reproducing this.

The Court: I do not think you need to reproduce it. The theory of the statute, as I understand it, is that the physical statement itself is given to the defendant unless there is something stricken out or withheld. I mean isn't that the implication of the statute?

Mr. Kelley: You mean rather than a photostatic copy?

The Court: The point I am making, this transcript, I have made no elimination from the transcript, there are some portions that probably do not relate directly or may relate to something foreign to this in a sense, but the whole transcript relates to the very matter that is here under consideration in effect, and the point I am making that you can consider, it is just a mechanical problem, is whether you want to let them have the transcript or you want to make copies of it.

Mr. Vincent: What I had in mind on this, I believe the defense already has a copy of this transcript. If they do [fol. 228] not have a copy of the transcript, we could produce this to the defense, but, if they have a copy, I do not see the necessity of giving them an extra one.

The Court: You can discuss that with Mr. Witt. The only thing that occurs to me under the theory of the statute is that the Court of Appeals, if there is an appeal, if there is a conviction and it is appealed, are entitled to have the matter that was presented to me. In other words, I do not know whether you could avoid it by saying the defense already has a copy of it.

Mr. Witt: We do not know whether it is the same thing especially with a man like this that we distrust so profoundly, so, we would like to have it.

The Court: What you can do is let him have the original transcript or make a copy of it. This is a copy, as a matter of fact. But there is no part of the transcript that I have eliminated or that has been withheld.

Mr. Witt: Your Honor is right, under the statute we are entitled to the originals in the possession of the Government.

The Court: But they do not have the original.

Mr. Witt: Whatever they have, if they have an original copy.

The Court: That is a volunteer statement. That is not any matter I have been furnished. But I have noticed from the mechanical notations that I gathered this was a copy of what he submitted.

Now then, I have next a series of separate sheets I might call them. Some of them I am withholding in their entirety. Others I think should be given. Again, I have tried to attach to the individual pages the part that I think should be eliminated and the part that should be given, and I think you can probably figure it out. I wish you would check them over and let me know. I think that completes the thing.

The next step is to get the copies and give them to the defendant. Do you know how long it will take to get the copies?

[fol. 229] Mr. Kelley: Well, your Honor, I think—

The Court: You after that, you will have to ascertain from the Department whether you are going to furnish them. I expect the record should show that you will be ordered to furnish the defendant the part that I have already given, and, of course, you can withhold the part that I have already withheld, and the reference to the original text you have submitted would show the portions that I think should be given to the defendant and the portions that should be withheld.

Mr. Kelley: Yes. We would like an opportunity to examine that, and then, if there are some areas where we might be in disagreement, we would like an opportunity to express ourselves to you on that point before the final—

The Court: I think you had better look at it first and arrive at what your conclusions are. I wonder in view of the fact that Mr. Witt is leaving at 2:00 o'clock, I wonder, could there be any possibility—how close a connection can you make? If you come down here at 1:00 o'clock, would you still have time?

Mr. Witt: That will be all right.

The Court: You can know by then, can't you?

Mr. Kelley: I think so.

Mr. Witt: I am not sure what you said about 1:00 o'clock, your Honor, but I would want what we are getting by 1:00 o'clock.

The Court: I doubt if they could do that, because I have no idea how rapidly—do you do your own photostatting (sic) up there?

Mr. Kelley: We are going to have it done commercially, and it presents a problem of how this is to be masked and getting those cut out and masking it and getting them photostatted (sic). It will probably, I should think it would take beyond 1:00 o'clock. I am sure it would, because there is a considerable amount.

[fol. 230] The Court: There is no purpose of his coming back unless—except you would know your position about whether you are going ahead and furnish them. I do not know that he needs to come over here.

Mr. Witt: You may let Mr. Deikman know. There will be this other problem.

The Court: The number one thing, as I see it, as I understand the procedure, is for the Government to look at these texts they have submitted and my notations on them and first decide whether they are going to furnish the part that I have already given. If they decide to do that, next is the mechanics of getting copies made.

Mr. Witt: When will we be able to come back after the prosecution has been able to look them over and see what your Honor has done?

The Court: They will know that by 1:00 o'clock. There won't be any copies, but I do not know that you need to come over. They can let you know by telephone although I think we ought to have the record straight on the thing.

Mr. Witt: I should think we all want to be together again.

The Court: You can tell whether you are going to furnish them by 1:00 o'clock?

Mr. Kelley: What we could do, as you know, there are quite a few of them to read. It won't take us as long to check as it took you to read the entire statements, but what we will do is do it with all the dispatch at our command, and as soon as we know we will contact Mr. Deikman. It seems to me, if we are in complete accord with what the Court has indicated should be eliminated, that we should then proceed to have them photostated.

The Court: I think we ought to have it in the record though that subdivision (d) says, "If the United States elects not to comply with an order of the court under paragraphs (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony [fol. 231] of the witness," and so forth. That is only part of the Section.

I think some place along the line you should say you are going to furnish it or not going to furnish it for the record rather than a telephone conversation. I believe you could tell by that time, it would not take but a few minutes, because we would all understand you would not have the copy, if you think you can do it by that time.

Mr. Kelley: I hesitate to say, because we will call Washington immediately as soon as we have had an opportunity to review them.

The Court: Let's leave it this way then: You will proceed as rapidly as you can and by 12:30 or something like that we will let them know if they are going to come over at 1:00. If you cannot, of course, we will have to have Mr. Deikman come over if it is after Mr. Witt leaves.

Mr. Witt: There is a problem there. On our side it happens I am handling this problem and not Mr. Deikman particularly because it is I, as I have indicated, who will cross-examine the witness and who has cross-examined him before and is familiar with his story, so that I would want to be here if there is any question.

The Court: What would be the absolute deadline?

Mr. Witt: My plane leaves at 2:20 this afternoon.

The Court: You would have to leave here at 1:30 and pick up your stuff?

Mr. Witt: May we go off the record for a minute?

The Court: Yes.

(Discussion off the record.)

The Court: I wish you would see if you cannot get this information within the deadline, and you can advise me and advise them as soon as you know.

Mr. Kelley: All right, we will do it as fast as we can.

[fol. 232] Mr. Witt: Why don't we agree to be back here at 1:00 in any event?

The Court: Yes. That may simplify it. If they are not ready, you can go on your way, and, if they are, that is all right, and that will save telephoning.

Mr. Kelley: Whatever state we are in at that time we will notify the Court.

The Court: I think that is better rather than the other way. I think this is also proper, when they commence to give study to my memo there, if you cannot figure out what really should be stricken—I think it is perfectly clear—but if there is any question about that, I think it proper that you can come down and see me, and I will point out what I had in mind. I didn't want to make any marks, and there are no marks whatsoever on the statement. I tried to put a note on them saying "Strike second paragraph," and all of that. If you have any difficulty, you may come down.

Mr. Vincent: So far as I can see your writing is clear.

Mr. Witt: Whenever you are ready I want to make a record on this issue.

The Court: Do you want to do it now? I do not know, of course, what you have in mind. What I am thinking is perhaps, maybe we had better do that in light of the fact they are going to have to find out about the Washington business, if your record could wait until they know what they are going to do—

Mr. Witt: I would rather make it now, your Honor, because, if we get together at 1:00 o'clock, there will be too much pressure, and I do not see why we cannot make our record now.

The Court: Proceed.

Mr. Witt: If your Honor please, in order to help us make our record we would like to ask your Honor what definition your Honor gave the phrase "subject matter" in the statute when your Honor reviewed the statements to distinguish them.

[fol. 233] The Court: I do not think the statute contemplates that the Court do that at all. As I understand the procedure, my duty is simply to say what portions might be withheld and what portions should be given to you and

that I, if I made a mistake on that, the question can be presented to the Court of Appeals in the event of a conviction, because I do not see how the matter could be discussed without to some degree at least explaining what the matter was that was eliminated and the reasons for it which would be equivalent in effect to detailing the whole report itself. So, I do not believe the Court is required to make any statement along that line.

Mr. Witt: All right. We take a contrary view to that from the constitutional point of view. All I wanted was to get your views on it, and we wanted to state our position on the record.

The Court: Very well.

Mr. Witt: The fact that neither the statute nor your Honor defines "subject matter" and in light of the fact that we, the defense, do not get to see the statements at the same time as your Honor does and do not have any opporunity to express our views as to the definition of "subject matter" and therefore as to what is relevant and as to what is irrelevant in the statements it is our position that we are being denied due process and the right to a fair trial under the Constitution.

I may as well complete my statement on the issues if your Honor has no objection.

The Court: No, proceed.

Mr. Witt: Beyond that, if Section 3500 authorizes the procedure that your Honor is following, apart from whether your Honor defines the phrase "subject matter" Section 3500 denies due process and a fair trial. Beyond that, if we are wrong in that, your Honor, in view of the fact that the defendant was indicted in 1954 and the indictment was pending in September, 1957, when this statute was passed the statute even if it is interpreted contrary to the position I have just stated, it is inapplicable to this defendant whose indictment was pending at the time the statute was passed. [fol. 234] The Court: Well, that objection will be overruled and, of course, in making the direction that the Court has pronounced here this morning with respect to the matter I was guided by the criterion of the statute which reads, "Upon such delivery the Court shall excise the portions of such statement which do not relate to the subject matter

of the testimony of the witness." That was the guide the Court followed in ruling as it did.

Mr. Witt: We have one other point entirely unrelated to this before we break up. Your Honor, you remember some of the testimony of the witness Eckert was admitted subject to connection. We didn't get yesterday's transcript by some error until this morning, so, we haven't had a chance to study it. So, we would like to reserve our motion to strike until Monday.

The Court: You can do that. As a matter of fact, I think from the very nature of the thing that that means really at the end of the Government's case in effect. You can reserve it until then, because it doesn't connect it up by his testimony. It would take other witnesses.

Mr. Witt: I didn't make myself clear. There is some material of that kind that the Government said it will connect up with other witnesses, but apart from testimony of that kind there is other testimony which the Government indicated it would connect to the testimony of the witness Eckert, himself, before he was finished, and we want to move to strike those parts before we begin our cross examination.

The Court: Well, all right, that will be all right.

Mr. Witt: Your Honor, we haven't had an opportunity to study yesterday's transcript thoroughly, but there may be one other matter relating to the discussion in Chambers about Section 3500 that we may want to come back to Monday, because we have the feeling that the record is either incomplete or embodies a misunderstanding, and we would like to come back to that also before we pick up our cross examination.

The Court: All right, I think that is all right.

The Court: Mr. Kelley, has the Government decided whether they will comply with the order of the Court, or what is the Government's position?

[fol. 235] Mr. Kelley: Your Honor, we have gone over the notations which you have made on the material which was submitted to you by the Government, and it is the decision of the Government to comply with the Court's interpretation at this time although we have some minor disagreements with the Court as to some portions, and I men-

tion this for the reason that we may with reference to future statements wish to, we will discuss it further or have the Court consider those matters.

The Court: You mean with respect to some future record?

Mr. Kelley: Some future record. In other words, we do not want to bind ourselves to the position we are taking now.

The Court: All we are passing on now is the question of furnishing the reports with respect to the witness Eckert. As I understand, you will comply with that and furnish them in compliance with the Court's order?

Mr. Kelley: Yes.

Mr. Witt: It is important for me to say from our side, your Honor, at this point that what Mr. Kelley has now said highlights the unfairness in this procedure. The defense doesn't have the slightest idea as to what the Court and the prosecution is talking about, and—

The Court: I am not in much better light than you are.

Mr. Witt: Except in one sense it doesn't matter. Mr. Kelley is talking about an issue, a very crucial issue in this case which we know nothing about. We have no time to consider, no opportunity to consider, no material to consider. The prosecution has an enormous advantage over us in that respect which is unfair and which denies us due process and an unfair trial.

The Court: As I understand, what Mr. Kelley said, and my impression is a little different than yours, is that in effect he is not in entire accord with the Court's view on the matter but notwithstanding that he is furnishing it, but he doesn't want to establish a precedent, so, if other statements are requested subsequently in the trial, that his acquiescence in furnishing these would be taken as any basis for his acquiescence in the others. In other words, as I [fol. 236] think should be done, and I think that is the Court's position, each one of these is going to be decided on the actual facts pertaining to them.

Mr. Witt: It is still our position that we are entitled to see all these reports in toto as long as they contain any material bearing on the subject matter of the witness's testimony.

The Court: I understand your position, and I think we have been over that. What was the motion? Was there any motion you made for me to rule on?

Mr. Witt: No. We made an objection. So, I want to renew it so there will be no doubt on the record on it.

* * * * * * *

[fol. 248] In Open Court

KENNETH ECKERT, resumed the stand, and testified as follows:

Cross examination.

By Mr. Witt:

Q. Mr. Eckert, you have testified before with respect to Mr. Travis and Mine-Mill, haven't you?

A. Yes.

Q. Would you tell us what those occasions have been if [fol. 249] there has been more than one occasion?

A. Is that Travis and Mine-Mill or just Mr. Travis?

Q. Travis and Mine-Mill.

A. Well, I have testified in proceedings involving the Mine, Mill & Smelter Workers in the trial of Mine, Mill & Smelters Workers by the CIO, in the Senate, United States Senate investigation of Mine, Mill & Smelter Workers, The McCarran hearing in Salt Lake City, the Jencks case in El Paso, Texas, Grand Jury of Ben Gold, and the subsequent trial of Ben Gold, the Grand Jury proceedings involving Maurice Travis in Denver, and the trial of Maurice Travis, the decompliance proceedings of the National Labor Relations Board against the Mine, Mill & Smelter Workers, the Security Activities Control Board hearings on Mine, Mill & Smelter Workers.

Q. You say the Securities Activities Control Board. You mean the Subversive Activities Control Board, don't you?

A. I believe that's correct, yes. These are the ones that I recall at the moment.

Q. Did you give testimony about Travis before a second Grand Jury in Denver at any time?

Mr. Kelley: Just a moment. The Government objects to that as being immaterial and not proper cross examination.

The Court: I think he can answer the question. You may answer, Mr. Eckert.

A. I don't recall any other Grand Jury proceedings involving Travis here.

Q. Well, Mr. Eckert, you stated that you testified about Travis before one Grand Jury in Denver. Can you remember when that was?

A. To the best of my recollection that was either the last part of 1954 or early 1955.

Q. Didn't you return to Denver subsequently to make another appearance before another Grand Jury in the Federal District Court?

A. I don't recall any other Grand Jury proceedings in Denver other than that one.

Mr. Witt: I am sorry, your Honor. This answer surprises me a little. All right, I think I can go forward while Mr. Deikman is checking that.

The Court: You may proceed.

[fol. 250] Q. Mr. Eckert, did you testify before a Grand Jury in El Paso before Jencks was indicted?

A. To the best of my recollection I don't think I testified before a Grand Jury there.

Q. Mr. Eckert, were you interviewed by an Agent or Agents of the FBI about the question of testifying against Jencks before a Grand Jury in El Paso?

A. I don't recall any such interview.

Q. Now, aside from giving testimony in the proceedings you have mentioned and in this case about Travis and Mine-Mill have you testified for the Government in any other case?

A. Yes.

Q. One case or more than one other case?

A. Well, I recall one case.

Q. What case was that?

A. The Smith Act case in Philadelphia. Oh, yes, the Ben Gold trial in Washington. I believe I mentioned that.

Q. I think you did. Any others?

A. I don't think there were any others.

Q. Did you testify before the Grand Jury in Philadelphia which handed down that Smith Act indictment?

A. To the best of my recollection I did not.

Q. And in testifying in that Smith Act case in Philadelphia did you have occasion to give any testimony about Travis?

A. I don't think there was any testimony about Travis insofar as I can recall.

Q. Or about Mine-Mill?

A. Well, it is entirely possible in mentioning Mine-Mill that I testified I was employed by him, but I don't recall.

Q. You don't recall giving any testimony about Mine-Mill, that is, in the Philadelphia Smith Act case?

A. I don't recall the testimony, the questions asked of me there.

Q. Now, going back to these proceedings you have mentioned, Mr. Eckert, I will try to take them in order and ask you to give us the dates when you testified as best you can recollect. I am not asking you for the exact dates. Give the exact dates if you recall. Otherwise, give us the year and the month if you recall. Beginning with your testimony before the CIO when did you give that testimony?

A. That was in 1950. I don't recall the time.

Q. Would it have been in January of 1950?

A. I don't recall.

Q. You mentioned the McCarran Committee hearings in Salt Lake City. Do you remember when you gave that testimony?

[fol. 251] A. That was in 1952. To the best of my recollection it was sometime in the fall.

Q. When did you testify on the Jencks trial?

A. To the best of my recollection the Jencks trial was in January of 1954.

Q. When did you testify before the Grand Jury in the Gold case?

A. I believe the testimony to the Grand Jury in the Gold case was in 1953.

Q. Incidentally, where did you give your testimony before the CIO, what city?

A. Washington, D.C.

Q. And what city—I think you already stated but I am not sure—in what city did you give your testimony before the McCarran Committee?

A. Salt Lake City, Utah.

Q. In what city did you give your testimony against Jencks?

A. El Paso, Texas.

Q. In what city did you testify before the Gold Grand Jury?

A. Washington, D.C.

Q. And subsequent to your testimony before the Grand Jury in Gold you testified on the Gold trial. Do you recall when that was?

A. That was in 1954 in Washington.

Q. Do you remember the month?

A. No, I don't.

Q. Then, you mentioned the proceeding before the NLRB. In what city was that?

A. Washington, D.C.

Q. Do you recall when that was?

A. In 1954.

Q. Do you recall the month?

A. I don't recall the month.

Q. You have already testified that you gave testimony before the Grand Jury in this court which indicted Travis. Do you recall when that was?

A. To the best of my recollection that was either the latter part of 1954 or early in 1955.

Q. Do you recall when it was that you testified before the SACB, being the initials of the Subversive Activities Control Board?

A. Yes.

Q. When was that?

A. That was in March of last year.

Q. That is, '57?

A. Yes.

Q. Did your testimony last into April, do you recall?

A. Yes, it did.

Q. And where was that, Mr. Eckert?

A. In Washington, D.C.

Q. All right, Mr. Eckert, I will ask you whether you had

any talk or discussions or interviews with the FBI, any Agent or Agents of the FBI during the period while you were still with the Mine, Mill & Smelter Workers.

A. No, I did not have.

Q. Mr. Eckert, I will ask you whether at any time when you were with the Mine, Mill & Smelter Workers you were [fol. 252] aproached by the FBI for the purpose of talking to them about Travis or the Mine, Mill & Smelter Workers.

Mr. Kelley: If the Court please, the Government objects to that as being immaterial and irrelevant, improper cross examination.

The Court: The objection will be overruled.

Mr. Kelley: May I approach the Bench, your Honor?

The Court: Yes.

(Conference at the Bench.)

In Open Court

The Court: Will you please read the last two questions and answer?

(The reporter read the last two questions and answer, as follows: "Question: All right, Mr. Eckert, I will ask you whether you had any talk or discussions or interviews with the FBI, any Agent or Agents of the FBI during the period while you were still with the Mine, Mill & Smelter Workers. Answer: No, I did not have. Question: Mr. Eckert, I will ask you whether at any time when you were with the Mine, Mill & Smelter Workers you were approached by the FBI.")

The Court: I think I will sustain the objection to the last question. I think the subject in this is covered by the previous question and answer.

Mr. Witt: I do not want to disregard your Honor's ruling. May I try another question in the same direction?

The Court: All right.

Q. Mr. Eckert, at any time before you left the Mine, Mill & Smelter Workers in 1948 did you refuse to talk to the FBI about Travis or the Mine, Mill & Smelter Workers?

Mr. Kelley: Same objection. The question has already been asked and answered.

[fol. 253] The Court: I think I will sustain the objection. The answer was given in the other answer.

Q. Mr. Eckert, did there come a time when you did talk to the FBI about Travis or Mine-Mill?

A. Yes.

Q. And when was the first time that you gave the FBI any information about Travis or Mine-Mill?

A. Well, it was sometime after I left the Mine, Mill & Smelter Workers to the best of my recollection. It was sometime in that year 1948.

Q. Do you recall what month during the year 1948 that was?

A. No, I do not.

Q. Do you recall answering a question about that when you gave testimony in another proceeding?

A. I don't recall the questions asked in those proceedings, no.

Q. I didn't ask you whether you recall the questions, Mr. Eckert. I asked you about this particular question, whether you recall being asked a question about this when you gave testimony in one of these other proceedings.

The Court: You will have to specify the time and place instead of asking him a general question. Ask him if such and such a time and then read the question to him and read the answer to that question that was propounded, the question propounded and the answer given.

Mr. Witt: All right, sir. Before I do that I would like to ask another question.

Q. You said it was sometime during the year 1948 after you left Mine-Mill. When was it again that you left Mine-Mill, Mr. Eckert?

A. We seceded in June of 1948 as far as I can recall.

Q. All right, now; do you recall whether it was within the next month or two or three months after June that you talked to the FBI or whether it was during the latter part of the year?

A. I don't recall when it was, no.

Q. Do you recall being cross-examined by me on this subject when you testified before the SACB in March of 1957?

A. I recall being cross-examined by you.

Mr. Witt: I move to strike that answer. Of course, the witness recalls being cross-examined by me. I want a responsive answer to my question.

[fol. 254] The Court: That was the answer. I thought it was responsive.

Mr. Witt: I asked him about being cross-examined on this question, not whether he was cross-examined by me.

The Court: No, he doesn't have to answer that question. He simply answered that he recalled being cross-examined by you. If there is any question you wish to call his attention to, you have to do it specifically and ask him if the following question was propounded and if he gave the following answer.

Mr. Witt: I am laying my foundation. In any event his answer that he was cross-examined by me is not responsive, and I move to strike it.

The Court: No, the answer will stand. I think it was responsive. He said he remembered being cross-examined by you.

Mr. Witt: That wasn't the question, your Honor. The question was whether he remembered being cross-examined by me about when it was he talked to the FBI after he left Mine-Mill.

The Court: No, the objection will be overruled, and the answer will stand, and you can frame your question along the line I indicated, because the witness asked to have his attention called to the specific question, not the general subject.

Mr. Witt: All right, your Honor. It is my understanding that I have to lay a foundation first, but, if your Honor sees it that way, I will proceed the other way.

The Court: If he says he did, you will have a problem of identifying the record.

Mr. Witt: I would just as soon proceed that way, because it is a nuisance to have these marked.

Mr. Kelley: I think as to this particular type of document that we would agree to that procedure.

The Court: All right, you can ask him if he, at that time the question was propounded and the answer was given as follows.

[fol. 255] Q. Mr. Eckert, do you recall that when you testified before the SACB in March of 1957 I asked you the following question and you gave the following answer: "Question: Approximately when in 1948 did you first talk to the FBI? Answer: Shortly after seceding from Mine, Mill & Smelter Workers."

A. I recall questions of a general nature and an answer that is along that line. That refreshes my memory. I don't know if it is the exact words or not.

Q. Now having heard the answer that you gave before the SACB on that occasion, Mr. Eckert, I will ask you whether you would say now that you talked to the FBI first shortly after you seceded from Mine-Mill.

A. Yes, I think it was shortly after.

Q. Now, in view of that can you tell us now according to your best recollection when shortly after it was, whether it was July or August or whether it was November or December of '48?

A. Well, by shortly after I meant five, six, nine months, less than a year, I know that.

Q. On that occasion, Mr. Eckert, did you go to the FBI to talk to them about Travis and Mine-Mill or were you approached by the FBI to talk to them about Travis and Mine-Mill?

Mr. Vincent: We object to that. We see no materiality in that question.

The Court: No, the objection will be overruled. He can answer the question.

A. The FBI then came to see me. When they inquired about Travis I don't recall.

Q. I didn't ask you that, Mr. Travis.

Mr. Witt: Your Honor, I move to strike that statement of the witness when they inquired. The question is whether he went to the FBI voluntarily or whether the FBI came to him on that occasion.

The Court: Well, he has answered the question, and the motion to strike will be denied.

Q. Answer the question, Mr. Eckert.

The Court: Well, he has answered.

[fol. 256] Mr. Witt: May I have the answer read back, please?

(The reporter read, as follows: "Question: On that occasion, Mr. Eckert, did you go to the FBI to talk to them about Travis and Mine-Mill or were you approached by the FBI to talk to them about Travis and Mine-Mill? Answer: The FBI then came to see me. When they inquired about Travis I don't recall.")

Q. Then, Mr. Eckert, if I understand your answer, your testimony is that on the first occasion when you talked to the FBI they came to see you, is that right?

A. Yes.

Q. Did you talk to them about Travis on that occasion?

A. I don't recall.

Q. Did you talk to them about Mine-Mill on that occasion?

Mr. Crandall: I object to that. I think we are interjecting Mine-Mill here.

The Court: The objection will be overruled.

A. I don't recall.

Q. Do you recall where that talk took place, Mr. Eckert?

A. In Cleveland, Ohio.

Q. Did it take place in your office or in the office of the FBI in Cleveland?

A. It was not in the FBI office. To the best of my recollection it was in my office.

Q. Where was your office at that time, the address in Cleveland, Mr. Eckert?

A. I don't recall which office. There were two of them at that time. I am not able to establish the location of the office at that particular time.

Q. Mr. Eckert, after you left Mine-Mill did you have any trade union connection?

A. Yes.

Q. And what was that?

A. The National Association of Die Casting Workers.

Q. And thereafter you became affiliated with the United Auto Workers, is that right?

A. Yes.

Q. When was it that you became affiliated with the United Automobile Workers?

A. Sometime in 1948.

Q. Do you remember when in 1948?

A. Well, late in the fall to the best of my recollection.

Q. Now, do you recall on this occasion when the FBI talked to you in your office whether you were still affiliated with the National Association of Die Casting Workers, or were you already affiliated with the UAW?

A. With the UAW.

[fol. 257] Q. Mr. Eckert, do you recall whether on that occasion you talked to the FBI about anything related to the subject matter of your direct testimony on the witness stand in this trial?

Mr. Kelley: The Government objects to that as already having been asked and answered.

The Court: I don't know that it is on that basis.

Mr. Kelley: He has stated that he didn't know when he first mentioned Mine-Mill or Mr. Travis. It has been asked two or three times in different ways.

The Court: I think probably the question is subject to possibly some matter of construction; you have asked him if he talked to them about anything he discussed in his direct examination or covered in the direct examination. There might be a difference of opinion about that. I think you better ask him about specific matters. I think I will sustain the objection to the question on the ground it is too general.

Mr. Witt: I want to shorten it, Your Honor. That kind of examination will make the cross examination fairly lengthy. I will be glad to do it; in fact, I would prefer it that way.

The Court: I think you better identify the subject matter you have in mind. I think you can do that generally rather than putting it within the scope of the direct testimony.

Q. Mr. Eckert, on that occasion—you know the occasion I am talking about—the first time you talked to the FBI

in your office in Cleveland—on that occasion did you tell the FBI anything about your own history in the Communist Party?

A. My history in the Communist Party? I don't understand the question, Your Honor.

Q. Do you have trouble with the word "history," Mr. Eckert?

Mr. Kelley: The Government objects to that.

Q. Did you study that when you went to school?

The Court: The witness said he didn't understand the question.

[fol. 258] Mr. Witt: All right, I will rephrase it if the witness has difficulty with the word "history."

Mr. Kelley: The Government objects to counsel's appraisal of the witness' understanding of or his characterization of it and move that it be stricken.

The Court: The witness said he didn't understand the question and counsel can proceed with another question if he wishes.

By Mr. Witt:

Q. Mr. Eckert, on that occasion did you talk to the FBI about your experiences in the Communist Party?

A. I don't recall that I discussed with the FBI on that occasion.

Q. Do you recall whether on that occasion you told the FBI that you had been a member of the Communist Party?

A. I don't recall what the subject was.

Q. Do you recall whether on that occasion, Mr. Eckert, you talked to the FBI about the so-called Steering Committee in Mine-Mill?

A. I don't recall what I discussed with them.

Q. So do your answers mean, Mr. Eckert, that no matter what subject I would ask you about in connection with your direct examination you would say you don't recall?

Mr. Kelley: The Government objects to that as an improper question and argumentative.

The Court: I will sustain the objection.

Q. Mr. Eckert, on that occasion when you talked to the FBI did you talk to them about the Mine-Mill convention in St. Paul in 1947?

Mr. Kelley: May it please the Court, the witness has already been asked this question and answered it, and to dwell on this one initial contact with the FBI, it seems to me, is improper cross examination.

The Court: I think he may answer the question. Of course, he has stated that he didn't recall the subject of the conversation, but there may be something in the question that suggests something to the witness' mind, so he may answer the question. You can read the question to him again, please.

[fol. 259] (The last question was read by the reporter.)

A. I don't recall.

By Mr. Witt:

Q. Did you talk to them about the Mine-Mill convention in Cleveland in 1946?

A. I don't recall.

Q. Did you talk to the FBI on that occasion about John Williamson?

A. I don't recall.

Q. Do you recall whether on that occasion you told the FBI whether or not you even knew Travis?

A. I don't recall.

Q. Do you recall whether on that occasion you talked to the FBI about Harold Sanderson?

A. I don't recall.

Q. Graham Dolan?

A. I don't recall.

Q. Chase Powers?

A. I don't recall.

Q. Al Skinner?

A. I do not recall.

Q. Gil Green?

A. I do not recall.

Q. Fred Fine?

A. I do not recall.

Q. Joseph Stalin?
A. I do not recall.
Q. William Z. Foster?
A. I don't recall.
Q. Eugene Dennis?
A. I don't recall.
Q. Ken Eckert?
A. I don't recall the subject of the conversation.
Q. Do you recall giving them your name?
A. I don't recall what I said to the FBI.
Q. Do you recall whether on that occasion you talked to the FBI about the meeting at the Russian Cooperative Restaurant in Chicago in 1946 about which you testified here on direct examination?
A. I don't recall.
Q. Did you talk to the FBI on that occasion about Henry Horowitz?
A. I don't recall.
Q. About Clinton Jencks?
A. I don't recall.
Q. About Jack Marcotti?
A. I don't recall.
Q. About Jack Clark?
A. I don't recall.
Q. About Orville Larson?
A. I don't recall.
Q. About Bill Haywood?
A. I don't recall.
Q. Was there only one agent on that occasion or more than one?

Mr. Kelley: The Government objects to that as being immaterial.

The Court: The objection will be overruled.

A. My recollection is that there were two.
Q. Do you recall their names?
A. Yes.

[fol. 260] Mr. Kelley: May it please the Court, the Government objects to that and wishes to approach the bench.

The Court: For what reason? You might as well state it for the record.

Mr. Kelley: Who the FBI agents were is immaterial to the proceedings here. He hasn't testified on direct examination as to any FBI agents. He stated the number. As far as testing his recollection, that seems to me is as far as we need proceed on that ground. There is no indication that the Government has any intention of calling them as witnesses, nor that the defense has.

The Court: The objection will be overruled and he may answer the question.

A. The one agent's name was Dave Wible. I don't recall definitely whether the other agent was Mr. Fernandez or not.

By Mr. Witt:

Q. There were subsequent occasions when you did talk to Agent Fernandez, weren't there?

A. I have a recollection at least on one occasion of having met and having talked to an agent. It seems to me that his name was Fernandez, something like that, pretty close.

Q. Do you recall his first name?

A. No, I do not.

Q. About how long did that conversation last, Mr. Eckert?

A. I really don't remember.

The Court: Are you talking about this first conversation?

Mr. Witt: Yes, we are still talking about that. I think the witness understood.

Q. You understand I was still talking about this one?

A. Yes.

The Court: You asked him about another conversation with Mr. Fernandez.

Q. I think the witness understood. Just so there will be no doubt in the record I am asking you about this first conversation in your office in Cleveland, whether you recall how long it lasted?

A. I do not recall.

[fol. 261] Q. Now, did there come a second occasion when you talked to the FBI, Mr. Eckert?

A. Yes.

Q. And do you recall when that was?

A. No, I do not.

Q. Do you recall in what city it took place?

A. Cleveland, Ohio.

Q. Do you recall how long after the first occasion this took place?

A. Well, it was less than a year; I don't recall how long, though.

Q. And do you recall where in Cleveland that conversation took place?

A. No, I don't.

Q. Was there only one agent on that occasion or were there more?

A. I don't recall.

Q. Do you recall the name of the one agent or the names of any of the agents?

A. Well, to the best of my recollection there was Mr. Wible.

Q. But, you don't recall whether any other agents were there in addition to Mr. Wible?

A. No, I don't recall.

Q. Do you recall whether at that time you were still affiliated with the National Association of Die Casting Workers?

A. Yes, I recall.

Q. Were you?

A. No.

Q. Were you then affiliated with the UAW?

A. The National Die Casting Association was affiliated with the UAW in that sense.

Q. I am asking you to make a distinction between the two periods, one before the National Association of Die Casting Workers became affiliated with the UAW, and two, after that, so I will ask you again so there will be no doubt in the record about it, and your answers: I ask you whether you recall whether this second occasion took place before the National Association of Die Casting Workers became affiliated with the UAW?

A. No, after.

Q. Your answer is it took place after the affiliation with the UAW, is that right?

A. Yes.

Q. When did the affiliation take place, the affiliation of the National Association of Die Casting Workers with the UAW?

A. 1948.

Q. When in 1948?

A. I don't recall the month, the latter part of the year.

Q. When you say the latter part of the year you mean sometime after August or after September or after October?

A. Well, it was after August; I don't recall when the merger actually took place. To the best of my recollection it was after August.

[fol. 262] Q. All right, Mr. Eckert, getting back to this conversation with Mr. Wible, on that occasion did you talk to Mr. Wible about Travis or Mine-Mill?

Mr. Kelley: Now, is counsel referring to the second time?

Q. Yes, I am referring, Mr. Eckert, to the second time when you talked to the FBI, specifically to Mr. Wible, or Special Agent Wible.

A. I don't recall what the conversation was or whether it was in regard to Mine-Mill or Mr. Travis.

Q. Do you recall whether on that occasion—in the series of questions, Mr. Eckert, I will be referring to the second occasion—do you recall whether on that occasion you told Mr. Wible about your own experiences in the Communist Party?

A. No, I do not recall.

Q. Do you recall whether on that occasion that, Mr. Eckert, you talked to Mr. Wible about the so-called Steering Committee in Mine-Mill?

A. No, I do not recall.

Q. Do you recall whether on that occasion you talked to Mr. Wible about Chase Powers?

A. No, I do not recall.

Q. About Al Skinner?

A. I don't recall.

Q. About William Z. Foster?

A. No.
Q. About Eugene Dennis?
A. No.
Q. John Williamson?
A. No.
Q. Gil Green?
A. No.
Q. Fred Fine?
A. No.
Q. Arnold Johnson?
A. No.
Q. On that occasion did you talk to Mr. Wible about this meeting in New York early in '48 with Mr. Travis and leaders of the Communist Party which you testified about on direct examination?
A. I don't recall.
Q. On that occasion did you talk to Mr. Wible about the meeting at the Russian Cooperative Restaurant in Chicago in 1946 about which you testified on direct examination?
A. I don't recall.
Q. On that occasion did you talk to Mr. Wible about Graham Dolan?
A. I don't recall.
Q. About Harold Sanderson?
A. I don't recall.
Q. About Jack Marcotti?
A. I don't recall.
Q. About Jack Clark?
A. I don't recall.
Q. About Orville Larson?
A. I don't recall.
Q. Did you give Mr. Wible your name on this second occasion, Mr. Eckert?
A. If he asked me I gave it to him; I don't recall whether he asked me or not.
[fol. 263] Q. On that occasion, Mr. Eckert, did you tell Mr. Wible why you were no longer associated with the Mine-Mill & Smelter Workers?
A. I don't recall what I told Mr. Wible.
Q. On that occasion did you tell Mr. Wible that you had been expelled from the Communist Party?

A. I don't recall.

Q. On that occasion did you tell Mr. Wible that the rule in the Communist Party was that a member couldn't resign?

A. I don't recall.

Q. All right, Mr. Eckert, I will ask you whether there came a third occasion on which you talked to the FBI or any agent or agents of the FBI?

A. Yes.

Q. And do you recall when that took place?

A. No, I do not.

Q. Do you recall in what city it took place?

A. Yes.

Q. What city?

A. Cleveland.

Q. Do you recall where in Cleveland?

A. No, I don't.

Q. Was there only one agent on that occasion, or were there more?

A. I don't recall.

Q. There was at least one agent?

A. Yes.

Q. And was that Mr. Wible again?

A. To the best of my recollection it was Mr. Wible.

Q. What was Mr. Wible's full name, Mr. Eckert?

A. My recollection is that his name was Dave Wible.

Q. Did there come a time when you called him by his first name?

Mr. Kelley: The Government objects to that as being immaterial, irrelevant.

The Court: I will overrule the objection.

A. Yes, I believe so.

Q. And there came a time when Dave Wible called you Ken?

A. I believe that's correct.

Q. You got to know Mr. Wible pretty well after awhile, didn't you, Mr. Eckert?

A. I don't think you ever get to know an FBI man very well.

Mr. Witt: I move to strike that, if the Court please.

Mr. Kelley: I think the whole line of questioning is improper, and it is in the nature of an argumentative line of questioning.

[fol. 264] The Court: Are you going to object?

Mr. Witt: I object to this procedure.

The Court: You have a motion to strike—

Mr. Witt: I have a motion to strike pending. I don't want Mr. Kelley to interfere with the procedure I am pursuing. After Your Honor acts on that Mr. Kelley can make his objection.

Mr. Kelley: I think the answer that he gave was in response to the question he asked.

The Court: The answer will stand; the motion to strike will be denied.

Q. Can you tell us how many times all together you talked to Dave Wible about Travis or Mine-Mill from the time that you first met Mr. Wible until you took the witness stand in this trial?

A. No, I don't recall.

Q. Would you be able to make an estimate?

A. No, I would not attempt to guess.

Q. Why do you have difficulty, Mr. Eckert, because there were so many occasions that you can't estimate?

A. No, I don't think so.

Q. Can you explain why you have difficulty answering a question of that kind?

A. Well, you asked me first of all if Mr. Wible—there were other agents I talked to, I don't recall how many, so I just don't want to guess at it.

Q. I didn't ask you about other agents. My question now is, Mr. Eckert, whether you can tell the ladies and gentlemen on this jury and the Court how many times you talked to Mr. Wible about Travis and Mine-Mill from the time you first met him until you took the witness stand in this proceeding.

A. Well, I understood your question to be why I couldn't estimate the number.

Q. Well, is your answer—

A. I don't remember how many times there were.

Q. And I will ask you again whether you can estimate how many times there were.

Mr. Kelley: The Government objects to this.

The Court: I think this is getting into the argumentative [fol. 265] stage. I think I will sustain the objection.

By Mr. Witt:

Q. Now, Mr. Eckert, on this third occasion that Mr. Wible talked to you—I think you said you don't remember when that was, is that right?

A. Yes.

Q. Can you estimate the time with reference as to how long after the second occasion it took place?

A. I don't remember when that may have been.

Q. Now, on this third occasion do you remember whether you talked to Mr. Wible about Travis or Mine-Mill?

A. I don't recall the subject of the discussion.

Q. On this third occasion did you talk to Mr. Wible about your own experiences in the Communist Party?

A. I don't recall.

Q. On this third occasion did you tell Mr. Wible that a member of the Communist Party couldn't resign from the Communist Party?

A. I don't remember the subject of discussion with Mr. Wible at that time.

Q. Do you recall whether on that occasion you told Mr. Wible that you had been expelled from the Communist Party?

A. I don't recall.

Q. Do you recall whether on that occasion you talked to Mr. Wible about Chase Powers?

A. I don't recall.

Q. Al Skinner?

A. Is the question do I recall?

Q. Do you recall whether on this third occasion you talked to Mr. Wible about Al Skinner?

A. No, I don't recall.

Q. Do you recall whether on this third occasion you talked to Mr. Wible about Harold Sanderson?

A. No, I don't recall.

Q. Do you recall whether on this third occasion you talked to Mr. Wible about William Z. Foster?

A. I don't recall.

Q. Eugene Dennis?

A. I don't recall.

Q. John Williamson?

A. I don't recall.

Q. Gil Green?

A. I don't recall.

Q. Fred Fine?

A. I don't recall.

Q. Arnold Johnson?

A. I don't recall.

Q. Joseph Stalin?

A. I don't recall.

Q. Do you recall how long this third conversation with Mr. Wible lasted?

A. No, I do not.

Q. Now, I will go back to the first conversation, Mr. Eckert, and ask you whether on that occasion you gave Mr. Wible a written statement of your own?

A. No, I did not.

Q. I will ask you with respect to the first occasion whether after you talked to the agents—I think you said there may have been another agent in addition to Mr. Wible on that [fol. 266] first occasion—I will ask you whether after you talked to the agents on that first occasion they later returned with a written statement which they asked you to read and to sign?

A. They never returned with a written statement asking me to sign.

Q. I will ask you whether or not on the first occasion when you were talking to the Agents they made notes of what you were saying.

A. To the best of my recollection they did not.

Q. I will ask you the same questions with respect to the second occasion, first, whether on that occasion you gave the Agents a written statement of yours.

A. No, I did not.

Q. I will ask you whether on that occasion the Agents made notes of what you were saying to them.

A. To the best of my recollection they did not.

Q. I will ask you whether, respect to that occasion the Agents or one of them returned with a document in writing which they asked you to read over.

A. They never returned with a document asking me to read it.

Q. With respect to the third occasion, Mr. Eckert, I will ask you whether on that occasion you gave Mr. Wible a statement of yours in writing?

A. No, there was no statement given Mr. Wible at that time.

Q. I will ask you—

A. In writing, that is.

Q. What?

A. There was no statement given him in writing at that time.

Q. I will ask you with respect to that time, the third occasion, whether Mr. Wible took notes while you were talking to him.

A. To the best of my recollection he did not.

Q. I will ask you whether with respect to that occasion Mr. Wible returned to see you with a document in writing based on the conversation he had had with you.

A. No, he did not.

Q. I will ask you with respect to any of these three occasions whether the FBI Agents asked you whether you would give testimony in any proceeding involving Travis or Mine-Mill.

Mr. Kelley: May it please the Court, the Government objects to this as not proper cross examination having no bearing on the issues in this case and wasn't covered on the cross or on the direct examination.

The Court: The objection will be overruled.

[fol. 267] A. These three meetings?

Q. These three I have already asked you about.

A. I don't recall any.

Q. Do you recall whether at any of these three meetings you told the Agents that you did not care to testify against Travis or Mine-Mill?

A. I don't recall the conversation at those three meetings.

Q. Do you recall whether on any of those three occasions any of the Agents asked you whether you would testify for the Government in any case?

A. I don't recall it.

Q. Mr. Eckert, did there come a fourth occasion when you had a conversation with the FBI or any of its agents?

A. Yes, yes, there was.

Q. And do you recall when that was?

A. No, I do not.

Q. Do you recall when it was with reference to the third occasion?

A. No, I do not other than it was some time later.

Q. Do you recall whether it was a short time later or a long time later?

A. No, I don't.

Q. Do you recall in what city that took place?

A. I don't recall when the fourth occasion was and, therefore, I don't know where the city was.

Q. Let me ask you this: Was there a fourth occasion?

A. Yes.

Q. Was there a fifth occasion?

A. Yes, I think so.

Q. Was there a sixth occasion?

A. Well, I don't remember how many there were.

Q. I didn't ask you that, Mr. Eckert. I asked you specifically whether there was sixth occasion.

A. I don't know.

Q. Then your answer would be the same if I asked you whether there was a seventh occasion, isn't that right?

A. Yes, I think so.

Q. Going back to the fourth occasion—

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After Recess

Cross Examination.

By Mr. Witt (Continued):

Q. Mr. Eckert, getting back to the fourth occasion on which you talked to the FBI I think you have already said you don't remember when that was, is that right?

A. That's right.

[fol. 268] Q. Do you recall what year that was?

A. No, I do not.

Q. Do you recall whether it was the year 1949?

A. I do not recall.

Q. Nineteen fifty?

A. I don't recall.

Q. Nineteen fifty-one?

A. I don't recall.

Q. Nineteen fifty-two?

Mr. Vincent: If your Honor please, the Government objects. The witness has answered that question.

The Court: There is no use of going to the categorical years where he says he doesn't recall.

Mr. Witt: All right, sir.

Q. I don't remember now, Mr. Eckert, whether you remembered what city that took place in. Did you before the recess tell us what city?

A. I don't recall what city it was.

Q. Do you recall whether there was only one agent on this occasion or more than one agent?

A. I don't recall.

Q. Do you recall whether Mr. Wible was one of the Agents?

A. To the best of my recollection, Mr. Wible was.

Q. Would that also refresh your recollection that this conversation took place in Cleveland?

A. Yes, I believe it would.

Q. And it did take place in Cleveland, didn't it?

A. I believe it did.

Q. Mr. Wible was in the FBI office in Cleveland, wasn't he?

A. I don't recall where the meeting was held.

Q. No, that wasn't my question, Mr. Eckert. My question was whether you knew Mr. Wible worked out of the FBI office in Cleveland.

A. Oh, yes.

Q. And was there any occasion when you talked to Mr. Wible in the FBI office in Cleveland?

A. Yes.

Q. Was that this fourth occasion I have been asking you about?

A. I don't think it was.

Q. Do you recall whether on this occasion you talked to Mr. Wible about Travis or Mine-Mill?

A. On this fourth occasion?

Q. Yes.

A. I don't recall.

Q. Do you recall anything you talked about to Mr. Wible on that occasion?

A. No, I do not.

Q. Now, I think you said before the recess that there came a fifth occasion when you talked to the FBI. Did there [fol. 269] come a fifth occasion?

A. Oh, yes.

Q. Was that to Mr. Wible again?

A. I don't recall these later meetings; I don't recall whether it was Mr. Wible or not.

Q. Getting back for a moment, Mr. Eckert, to the fourth meeting I just finished asking you about, did you make any written statement or give Mr. Wible any written statement on that fourth occasion?

A. To the best of my recollection I did not.

Q. Did Mr. Wible take notes while you were talking to him on that occasion?

A. My recollection is that he did not.

Q. Did Mr. Wible come back to you after he talked to you on that occasion with a document in writing which he asked you to read over?

A. He never came back with any document.

Q. Did you ever sign any document for Mr. Wible?

A. Yes.

Q. When was that?

A. It was sometime after these series of meetings you have queried me about, but I don't remember when it was.

Q. Do you remember the year?

A. No, I do not.

Q. Now, coming back to the fifth occasion I was trying to ask you about, Mr. Eckert, I think you said you don't remember whether Mr. Wible talked to you on that occasion, is that right?

A. I don't recall.

Q. Was there only one agent on that occasion or more than one agent?

A. I don't recall.

Q. In what city did that discussion take place?

A. I don't recall the occasion; I just know there was a fifth meeting, that's all.

Q. You have already said you don't recall when it took place, is that right?

A. I do not.

Q. And you wouldn't recall anything you talked about on that occasion, is that right?

A. Nothing.

Q. Now, did you say before the recess that you would not recall whether there was a sixth occasion or not on which you met with the FBI?

A. Oh, I am sure there was a sixth occasion.

Q. Do you recall when that was?

A. No, I do not.

Q. Do you recall whether there was more than one agent on that occasion?

A. I don't recall the occasion.

Q. Then you wouldn't recall where the discussion took place?

A. No, I do not.

Q. You only recall that there was a sixth time when you talked to the FBI, is that right?

A. Yes.

[fol. 270] Q. Was that the occasion on which you made a written statement either at the time the agents talked to you or thereafter?

Mr. Kelley: May it please the Court, I think this has already been asked and answered and gone into and that the Court in its discretion could very well terminate this type of cross examination. It seems to me that if Mr. Witt has some FBI reports in which inconsistent statements appear, inconsistent with his testimony on direct, that we could get on with the law suit.

Mr. Witt: I object to Mr. Kelley's attempting to indicate the line of my questioning to the witness in the guise of

making an objection, and I move that Mr. Kelley be cautioned not to do that.

The Court: I think what Mr. Kelley is trying to do is probably shorten the examination. You asked him categorically with respect to these various matters as to each meeting, and probably when he says that he doesn't recall anything that happened in the meeting, that is sufficient; but, I have been letting you pursue your own method, and I think you may continue, but I wish you would keep in mind trying to avoid repetitious matters. I don't believe this question quite came in that category.

Mr. Witt: I have been trying to shorten my examination, Your Honor, and I think you are right.

The Court: You might read the question again, Mr. Reporter.

(The last question was read by the reporter.)

The Court: I think you may answer the question.

A. I don't recall whether that was the occasion or not.

Q. Did there come a seventh occasion when you talked to the FBI?

A. Yes, I am sure there was.

Q. Did there come an eighth occasion when you talked to the FBI?

A. Is this any period, this question?

Q. Any period from the time you left Mine-Mill in 1948 until you took the witness stand here last week.

A. Oh, yes.

[fol. 271] Q. Was there a ninth occasion?

A. Yes.

Q. Tenth?

A. Well now, I don't know. I didn't keep any records of these things. I would be inclined to think there was, but I don't know for sure.

Q. Would you be inclined to think there was a tenth occasion?

A. Yes, I think so.

Q. And an eleventh occasion?

A. I think so.

Q. Twelfth?

A. Yes, I think so.

Q. Thirteenth?

A. I can only guess now; I don't know.

Q. And you would then have to guess as to whether there was a fourteenth occasion also, is that right?

A. Yes.

Q. Now, if I followed your answers before the recess, Mr. Eckert, I think you said that you remembered a fifth occasion on which you talked to the FBI, but you were unsure about a sixth or seventh occasion. Didn't you give those answers before the recess?

A. I recall stating that I recall that there was a fifth, sixth, seventh, and eighth and so on.

Q. You don't recall testifying before the recess that although you thought there was a fifth occasion on which you talked to the FBI you did not remember whether there was a sixth or seventh?

Mr. Kelley: May it please the Court, this is argumentative. The jury will remember what he testified to before the recess.

Mr. Witt: This is preliminary, Your Honor.

The Court: I think I will sustain the objection because the testimony is here and it is argumentative in a sense.

By Mr. Witt:

Q. Mr. Eckert, did you talk to anybody about this line of questioning during the recess?

A. No.

Q. Did you look at any document which refreshed your recollection about this line of examination during the recess?

A. No, absolutely not.

Q. Do you recall giving testimony under my cross examination before the SACB about the number of occasions on which you talked to the FBI after you left Mine-Mill in 1948?

Mr. Kelley: May it please the Court, to go into what he testified to on the SACB is not testing his recollection as to anything that he said on direct examination in this case, [fol. 272] and the purpose of cross examination is to test

the veracity of what he said on his direct examination, not what he said before the SACB or on his cross examination.

The Court: I think he has a right to interrogate about that, but I will sustain the objection on the basis of the form of the question, unless the latter is pointed up. The witness has the right to have propounded to him a precise question that relates to this subject, not the question of the general subject, because you might think you interrogated about that and the witness may not recall. If there is any question, specific question or specific answer, why, that may be called to the witness' attention and he may be asked whether he so testified.

Mr. Witt: All right, sir.

The Court: I will sustain the objection, as I say, on the basis that the question is too broad.

Q. Mr. Eckert, when you testified before the SACB under my cross examination in Washington on March 29, 1957, do you remember my asking you the following questions and your giving the following answers? I have already given Mr. Kelley the page number. He has a copy of the transcript.

"Q. Approximately when in 1948 did you first talk to the FBI?

"A. Shortly after seceding from Mine-Mill & Smelter Workers."

That was the question and answer I read to the witness before the recess.

"Q. Do you recollect when the next time was that you talked to the FBI?

"A. Beginning at that time and every year and many, many times since I have talked to the FBI."

Do you remember giving those answers to those questions?

A. Yes, I remember those general questions of that nature and those answers.

Q. Then would you say in view of the answers you gave me a few moments ago that you remembered a twelfth occasion that when you testified before the SACB that there were many, many times, you were referring to about twelve times?

Q. Mr. Kelley: May it please the Court, I think that is an argumentative type question.

[fol. 273] The Court: I think that is argumentative pure and simple. I think the witness has testified here a number of times that he can't recall the exact number of times. You asked him specifically here and he answered he couldn't recall or wouldn't attempt to say the number of times, so I think that is argumentative, the last question, and the objection will be sustained.

Q. Mr. Eckert, I will get back now to the sixth occasion on which you talked to the FBI. Do you remember when that was?

A. No, I do not.

Q. And do you remember in what city that took place?

A. No, I do not.

Q. Do you remember whether there was only one agent on that occasion or more than one agent?

A. No, I do not remember.

Q. Do you remember any matter you discussed with the FBI on that occasion?

A. I do not remember the subject matter discussed at that particular meeting.

Q. Was that the occasion in connection with which you signed the statement you testified about a few minutes ago?

A. I don't recall.

Q. I will ask you on which of the twelve occasions you said you remembered talking to the FBI—

Mr. Kelley: Just a moment; that assumes a fact not in evidence.

Mr. Witt: I will withdraw it; I will get to it another way and save time.

By Mr. Witt:

Q. Now, you have testified, Mr. Eckert, that there was a seventh occasion on which you talked to the FBI. Do you remember when that was?

A. No, I do not.

Q. Do you remember in what city that was?

A. No, I do not.

The Court: I don't believe, Mr. Witt, there is any occasion in going over these each one separately. The witness, I think, has answered a number of times up to this occasion at least that he couldn't identify the time and so forth. Ask him if he knows the time of any of these subsequent meetings, if you want to enumerate them up to twelve you can, but I don't think you need to ask him with respect to each one of them.

[fol. 274] Mr. Witt: I would like to ask him a general question and see if that will shorten it.

The Court: All right.

Q. With respect to any of your meetings, Mr. Eckert, after the fifth one, any of the meetings after the fifth one, whether you remember when they took place?

A. No, I do not.

Q. I will ask you with respect to any of the meetings after the fifth one whether you remember where they took place?

Mr. Kelley: That question is vague, I think.

The Court: I think so, too, although counsel may be attempting to follow the suggestion of the Court, because if you have in mind any specific meeting, why, ask him about that. Maybe you better proceed on your own basis.

Mr. Witt: All right, I will rephrase that a little.

Q. Mr. Eckert, do you remember with respect to any of these meetings after the fifth in what city they took place?

A. Well, my recollection is that some of them took place in Cleveland.

Q. And do you have any recollection as to where the others took place?

A. My recollection is that some of the others took place in Cleveland, too, but I am not sure about it.

Q. I am asking you about all the meetings after the fifth now, Mr. Eckert. Do I understand your answer to be that some of them took place in Cleveland?

A. Yes, my recollection is that some did.

Q. And is it your recollection that some took place in other cities?

A. Well, other cities, Avon Lake, which is not in Cleveland proper. I think that one took place there.

Q. And the other city besides Cleveland or Avon Lake?

A. I can't identify which were the sixth, seventh, or eighth meeting.

Q. I didn't ask you that, Mr. Eckert; I didn't ask you yet to identify which sixth, seventh, eighth, or ninth meeting took place in any city. I asked you with respect to all the meetings after the fifth, and you said you have a recollection of at least twelve, to tell us the cities in which they took place according to your best recollection. Now, you have said some took place in Cleveland, one took place in [fol. 275] Avon Lake, and I asked you whether you remember whether any of those subsequent to the fifth took place in any other city?

Mr. Kelley: Now, I am not clear—maybe the witness is—but, he is talking about possibly the first twelve, or is he talking about from the time of the fifth meeting up until the time of this trial?

Mr. Witt: I have said over and over again in these last few questions I am talking about the meeting after the fifth. I am asking him after the first five.

Mr. Kelley: You interjected the figure twelve in your last question.

Mr. Witt: I will ask again so there is no doubt in the witness' mind that I am now asking about all meetings subsequent to the fifth, to tell us whether he recollects in what cities they took place.

A. I don't recollect where they took place.

Q. Did I understand you to say a moment ago that some of them did take place in Cleveland?

A. My recollection is that some meetings took place in Cleveland.

Q. And we are still talking about all of those after the fifth, Mr. Eckert, so that you don't misunderstand me.

A. Maybe I do misunderstand; I don't know when the fifth was.

Q. All right; now, I will ask you again so there is no doubt in the record. I am talking about all the meetings after the fifth, whenever they took place. I am not now asking you about when, Mr. Eckert, whenever they took

place, all the meetings after the fifth, whether you remember any of the cities in which any of them took place?

The Court: There is a false premise to your question. The witness keeps repeating; I think he said he didn't know or he didn't recall the fifth meeting as such, is that right?

The Witness: That's right, Your Honor.

The Court: And you are assuming that as having been a fixed time.

[fol. 276] Mr. Witt: I am not talking about the time, Your Honor.

The Court: Or the place.

Q. I will ask him, I will simply (sic) it. I will ask him now then to begin with the first meeting—because I am anxious that the record be clear—beginning with the first meeting as many meetings as he remembers, to give us the cities of each meeting until he exhausts his recollection.

Mr. Kelley: May it please the Court, I think that is—

Mr. Witt: Mr. Kelley is attempting to make this line of examination impossible, Your Honor. This question is a simple one and the witness is evading an answer to it.

Mr. Kelley: The question is not a simple one.

The Court: I am not so sure of that; do you understand the question he is asking you?

The Witness: Yes.

The Court: You may answer it then.

A. I recall at least the first three meetings were held in Cleveland. I am not sure from there on numerically which meeting was which or exactly where it was held.

Q. All right now, you referred a few minutes ago to a meeting in Avon Lake I think at your home, is that right?

A. Yes, I believe that's right.

Q. Now, I will ask you whether you recall when that discussion took place at your home in Avon Lake?

A. No, I don't.

Q. I will ask you with respect to that, one, whether there was one Agent on that occasion or more than one Agent.

A. I don't recall.

Q. I will ask you whether you recall whether Mr. Wible was present on that occasion?

A. I don't recall whether is was Mr. Wible.

Q. Do you recall what the subject matter of that conversation was?

A. No, I don't.

Q. Now, when was it that you lived in Avon Lake, Mr. Eckert?

[fol. 277] A. Well, during this period sometime in '48 or '49 until about 1951 or sometime around there

Q. Where did you move to in '51?

A. Well, if it was 1951 sometime about there, Saint Clair Shores, Michigan.

Q. How long did you live in Saint Clair Shores?

A. One year.

Q. And then where did you move to?

A. Grosse Pointe, Michigan.

Q. That is where you live now?

A. Yes.

Q. Now, Mr. Eckert, you said there was one occasion on which you did sign a statement. Do you recall when that was?

A. No, I don't.

Q. Do you recall in what city that was?

A. Yes.

Q. What city?

A. Cleveland, Ohio.

Q. Was that before or after the National Association of Die Casting Workers became affiliated with the UAW?

A. After.

Q. Do you recall where in Cleveland that was that you signed the statement, was it in the FBI office?

A. Yes.

Q. Did you say you didn't recall whether Mr. Wible was present on that occasion?

A. I don't think I said that.

Q. I will ask you whether Mr. Wible was present on that occasion.

A. Yes, he was.

Q Any other Agents?

A. Yes, there was.

Q. How many other Agents?

A. My recollection is that there was one other Agent.

Q. Do you recall his name?

A. No, I do not.

Q. Would it have been Mr. Fernandez?

A. It could very well have been.

Q. Do you recall whether that statement was related to the subject matter of your testimony on direct examination in this trial?

A. Well—

Mr. Kelley: May it please the Court, I think that answer calls for a legal conclusion.

Mr. Witt: I will withdraw it. I want to make it short, but Mr. Kelley prefers it the other way. I will do it the other way.

Q. Mr. Eckert, on that occasion did you discuss your own experiences in the Communist Party?

A. Yes.

[fol. 278] Q. On that occasion did you discuss Travis?

A. I don't recall whether I did or not.

Q. On that occasion did you discuss Mine-Mill or any other person associated or affiliated with Mine-Mill

Mr. Vincent: If your Honor please, I am not sure at this point whether he is talking about oral discussions on an occasion or whether he is talking about the written statement to which he has referred.

The Court: Well, he asked him about discussions is what I understood, not the statement. Read the question, will you?

(The reporter read the last question.)

A. Well, I understood him to mean the statement.

The Court: What do you mean?

Mr. Witt: All right, the statement. I will take it the answer pertains to the statement.

Q. In that statement did you refer to Mr. Travis?

Mr. Kelley: May it please the Court, if counsel is referring to the statement, it seems to me we should follow

somewhat the same procedure we did with this prior testimony.

The Court: Yes, if you have a written statement signed by the witness, the way to interrogate him is with respect to the statement, not test his recollection as to what is in the statement. As to what is actually in it is what we are interested in.

Mr. Witt: In view of the witness's answer I haven't the slightest idea whether I have a copy of the statement or not. That is what I am trying to find out.

The Court: Well, I will sustain the objection on the basis that the question is entirely too broad. If there is anything specific, the subject, something said about it may be entirely irrelevant and entirely out of the scope of the direct examination here and entirely out of the whole field that is involved here.

[fol. 279] (Conference at the Bench.)

In Open Court.

Q. Now, Mr. Eckert, I asked you this morning whether you testified before the Grand Jury in El Paso which indicted Jencks. As I recall your answer, you said no. Is that right?

A. My recollection of my testimony was that to the best of my recollection I did not recall testifying there before the Grand Jury, that is.

Q. Then, I think I also asked you before the recess whether the FBI talked to you about testifying before the Grand Jury which was considering the Jencks matter, and I think you said you didn't recall, is that right?

A. Yes, that's right.

Q. Mr. Eckert, I take it from the answers you have already given that in 1953 you were already living at Grosse Pointe, Michigan, is that right?

A. Yes, my recollection is yes.

Q. All right, I will direct your attention specifically to the month of April—I withdraw that, if I may, your Honor.

I am sorry. In the month of April, 1953, was your office in Detroit?

A. Well, I don't recall. It is about the time we moved I think. I don't recall.

Q. I thought you said a little while ago, Mr. Eckert, that you moved from Saint Clair Shores—I may have misunderstood you, but I thought you said you moved from Saint Clair Shores, Michigan, to Grosse Pointe, Michigan, in 1952.

A. You were talking about my home. Now you are talking about my office.

Q. Well, I want to find out about both your home and your office. Now, to refresh your recollection about your office I went back to your answers about your home. Now, if I understood you correctly, you said you were living in Grosse Pointe in 1952 and down to date, and I will ask you whether that doesn't refresh your recollection that in April, 1953, your office was in Detroit.

A. I don't recall just whether the office was in Detroit or in Cleveland.

Q. Do you recall then when you moved your office from Cleveland to Detroit?

A. No, I don't.

Mr. Witt: I am showing Mr. Kelley the document I intend to exhibit to the witness.

Mr. Kelley: I think, your Honor, that probably the document should be identified so that there will be some way of knowing what he refers to.

[fol. 280] Mr. Witt: I intend to before I show it to the witness. This would have to be marked for identification. I just showed it to Mr. Kelley first so he will know what I am doing.

The Court: If there is any direct reference to it, I think it ought to have an exhibit number on it. I do not know enough about what you are doing.

Mr. Witt: I would rather have it marked for identification.

The Court: All right, you may have it marked.

(Document marked Defendant's Exhibit A for identification.)

Mr. Witt: If the Court please, and ladies and gentlemen of the Jury, on the basis of this short informal conversation

I have had with Mr. Kelley, Mr. Kelley has agreed that this document, which has just been marked Defendant's Exhibit A for identification, may be received in evidence.

Mr. Kelley: Well, my understanding of our stipulation was that I would stipulate that this exhibit was received from the Government.

Mr. Witt: I will add that to the stipulation.

The Court: Well, I think the stipulation can so be. The question about its admissibility in evidence would depend on relevancy, and they would have a right to object if it is irrelevant or for any other reason even if it was furnished by the Government.

Mr. Witt: May the record show at this point so there may be no doubt about that that Exhibit A, Defendant's Exhibit A for identification was received by the defense from the Government pursuant to the order of the Court after we made a motion for production of the witness's statements.

The Court: I think the record can show that. Now, you may proceed then.

Mr. Kelley: I think we would like to see what line of questioning develops before we stipulate as to its admissibility in evidence.

[fol. 281] The Court: All right, you may proceed.

Mr. Witt: May we approach the Bench?

The Court: Yes.

(Conference at the Bench.)

In Open Court.

The Court: Let's let the record show about authenticity.

Mr. Kelley: The Government stipulates that Government's Exhibit A is an authentic record and makes no objection to its use on that ground.

The Court: All right.

Mr. Witt: All right, your Honor, I also move its admission in evidence at this point, because, as I explained—

The Court: The relevancy will have to be ascertained first. They have admitted the authenticity, and you may proceed to interrogate now, and we will pass upon whether it is admitted or not.

Mr. Witt: Mr. Kelley has made a suggestion that I think will take care of it.

Q. Mr. Eckert, I show you Defendant's Exhibit A for identification, which is a photostatic copy of a telegram from the FBI in Detroit to the Director of the FBI, SAC, Albuquerque, "SAC" standing for Special Agent in Charge, and I will ask you to read that to yourself and ask you whether that document refreshes your recollection that you talked to the FBI in Michigan in April, 1953, about Jencks.

Mr. Kelley: Are you through?

Mr. Witt: Yes.

Mr. Kelley: The Government objects to this for the reason that the line of questioning just preceding the production of this exhibit related to whether or not his office was in Cleveland or Detroit, as I recall primarily Detroit.

[fol. 282] Mr. Witt: Mr. Kelley is right about that, but earlier I asked the witness whether he recalled talking to the FBI about giving testimony against Jencks in El Paso before the Grand Jury, and the witness said he had no recollection, and that is the answer that I am seeking to refresh his recollection about.

Mr. Kelley: Then as to that—

The Court: Let the witness read the exhibit, and then he can answer it, whether it refreshes his recollection.

Mr. Kelley: Then we would like to add the further objection, your Honor, that as to that subject matter it is irrelevant to his testimony on direct examination. It has no probative value here, and it is extraneous as far as this case is concerned.

The Court: Well, let's see if it refreshes his recollection first.

Mr. Kelley: Would the Court care to see a copy of the exhibit?

The Court: Yes.

A. The question, I think I have forgotten what it is.

The Court: Please read the question. What was the question?

(The reporter read the last question.)

Mr. Kelley: The Government further objects to that for the reason it is going into a matter that is collateral to the issues in this case.

Mr. Witt: May I be heard on that for a moment, your Honor?

The Court: Yes.

Mr. Witt: In this—

The Court: We may be debating about something hypothetical unless the witness does say it does refresh his recollection with respect to the subject that was asked in the question, and I think he might answer that yes or no, and then we can get into the question that you are talking about.

[fol. 283] Q. Do you want to see this again?

A. No.

Q. Will you answer the question whether that refreshes your recollection along the line indicated?

A. It refreshes my recollection that there was a conversation with an agent in regard to some of the matters there.

Q. Now, do you recollect in what city that conversation took place?

A. Well, I just assume it took place in Detroit.

Q. I think you said it refreshes your recollection that you had a conversation with an Agent. Do I understand from that there was only one Agent on that occasion?

A. I don't recall whether there was one or two.

Q. Do you remember the name of the one Agent or the names of any of them?

A. No, I don't.

Q. Now, on that occasion did the Agent talk to you about Jencks?

A. Well, my recollection is that he did.

Q. And does that telegram that you looked at that I used to refresh your recollection with, Defendant's Exhibit A for identification, also refresh your recollection as to what you told the Agent about Jencks?

Mr. Kelley: The Government objects to that as irrelevant.

The Court: What is the relevancy of that in this proceeding?

Mr. Witt: Well, because—

The Court: In order to have any relationship to what he testified to on direct examination or as to his credibility or anything else—

Mr. Witt: That telegram relates to a meeting or meetings attended by Jencks at the St. Paul convention of Mine-Mill in 1947 about which the witness testified on direct examination.

The Court: If you wish to limit your question to something that he did testify to, for instance, my recollection is that he did testify that Jencks was at some meeting he attended, is that right?

Mr. Kelley: I don't recall, your Honor, whether he mentioned the name of Jencks as being at that convention or not. My recollection is that he didn't.

The Court: Well, that would be one thing I would want to know before I rule on the question.

* * * * * * *

[fol. 293] Kenneth Eckert resumed the stand, and testified as follows:

Cross examination (continued).

By Mr. Witt:

Q. Mr. Eckert, before the noon recess I was asking you about your conversation with the FBI in Michigan in April, 1953, about Jencks. I will now ask you that you have recalled that conversation whether you recall what you told the FBI on that occasion about Jencks?

Mr. Kelley: The Government objects to that as improper cross examination.

The Court: I will sustain the objection. The question is too general as has been pointed out. If there is any specific statement made that is relative to this case, you can inquire if such a statement was made or anything relative to it, but he may have talked to them about the subject, about a good many things that were not relevant in this case.

Mr. Witt: I follow your Honor.

Mr. Kelley: Your Honor, may I hand the witness a copy of the exhibit, Exhibit A, which—

The Court: Not unless the witness requests it.

Mr. Witt: I would just as soon let the witness have it. I have no objection.

The Court: You have no objection?

Mr. Witt: I have no objection to the witness looking at that while he answers my question.

The Court: All right, you can hand it to him.

Mr. Witt: May I say to the witness in answering the questions relative to this incident he may refer to that copy of the statement Mr. Kelley has handed to him.

[fol. 294] The Court: Very well.

Q. Mr. Eckert, do you recall whether on that occasion you told the FBI that you had met with Jencks in Communist meetings at the St. Paul convention of Mine-Mill in 1947?

A. I don't recall what I told the Agent at that time.

Q. Will you glance at that copy of the telegram which Mr. Kelley handed you and see whether that refreshes your recollection that on that occasion you did tell the FBI that you had had meetings with Jencks which were Communist meetings at the St. Paul convention of Mine-Mill in 1947?

A. It only refreshes my recollection to the fact that somewhere back there an Agent of the FBI asked, came, interrogated me about certain matters which apparently this is one of them. I don't recall the conversation with the Agent.

Q. But were there certain matters about Jencks?

A. I don't recall, but the Agent so states here.

Q. Do you recall whether on that occasion you told the Agent that Jencks attended a meeting at the home of Henry Horowitz in Chicago prior to the St. Paul convention of Mine-Mill in 1947?

Mr. Kelley: The Government objects to the form of that question. I don't think there is anything in the exhibit that relates to the question, and it points up the difficulty of using this type of an instrument which is somebody else's reporting something that this man is purported to have said and then trying to check his memory based on that, and it

seems to me that the question is confusing to begin with and it is irrelevant if understandable.

The Court: No, I think I will overrule the objection. You may read the question to Mr. Eckert.

(The reporter read the last question.)

A. I don't recall what I told the Agent.

Q. Do you recall whether on that occasion you told the Agent anything about a meeting at Henry Horowitz's in Chicago in 1947 prior to the Mine-Mill convention?

A. I don't recall what I told the Agent.

Q. You don't even recall that you told the Agent what the Detroit FBI stated in that telegram you were prepared to testify to, is that right?

[fol. 295] Mr. Kelley: Just a minute. That last part of the question makes it a little unintelligible. Will you read that question?

Q. Mr. Witness, will you listen to the question and see if it is intelligible to you?

(The reporter read the last question.)

A. I don't recall that. I don't recall even reading here I was prepared to testify.

Mr. Witt: I am finished with this line for the time being. So, the witness may hand that document to Mr. Kelley.

The Court: All right.

Q. Mr. Eckert, I will ask you whether in any discussion you had with the FBI at any time anywhere you ever told the FBI about Jencks' presence at Communist meetings at the St. Paul convention.

A. I don't recall the specifics of the conversations with the FBI.

Q. I am not asking, Mr. Witness, for—

Mr. Witt: I move that be stricken.

Q. Mr. Witness, directing your attention to my question which is whether you ever told the FBI to your present recollection about attending Communist meetings with Jencks in St. Paul at the Mine-Mill convention in 1947.

A. I don't recall what the conversations were with the FBI particularly.

Mr. Witt: I move to strike the answer, and I ask your Honor to instruct the witness to answer yes or no to that question.

Mr. Kelley: I think the witness has answered to the best of his ability.

The Court: You asked him if he recalls, that was the form of the question, wasn't it?

Mr. Witt: All right, sir.

The Court: I expect he could answer either "yes" that that did recall, "no" would indicate that he didn't. Was the word "recall" in the question?

[fol. 296] Mr. Witt: Yes, it was.

The Court: Well, on that basis I think he can answer yes or no if the question simply was did he recall ever telling anyone that.

Q. The question, Mr. Eckert, is whether you recall telling the FBI at any time at any place that you attended Communist meetings with Jencks at the St. Paul convention of Mine-Mill in 1947.

A. No, I don't recall whether I did or not.

Q. Mr. Eckert, I will ask you whether you recall now telling the FBI at any time at any place that you attended a meeting with Jencks at the home of Henry Horowitz in Chicago in 1947 prior to the St. Paul convention of Mine-Mill?

Mr. Kelley: May it please the Court, the Government objects to that, first because I think it has already been asked and answered, and second, if the examiner is trying to find out about some particular time when he talked to the FBI and may have made some statement about this he should produce the statement and ask him about it.

The Court: I will overrule the objection. I think it was possibly touched upon before, but I don't know if it was exactly covered. You can answer the question, Mr. Eckert.

Q. Would you like the question read back, Mr. Eckert?

A. No. I don't recall.

Q. Now, Mr. Eckert, I will ask you whether you recall talking to the FBI at any time or at any place about Chase Powers?

A. Well, I have a recollection of having told the FBI that Chase Powers was a member of the Steering Committee—

Mr. Deikman: Motion to strike that, Your Honor. It is not responsive to the question.

The Court: I think it can stand.

Mr. Witt: May I have the answer to this point read back, please?

(The last answer was read by the reporter.)

A. —and that the facts relating to Chase Powers and other members of the Steering Committee and other Communists in Mine-Mill & Smelter Workers could be—

[fol. 297] Mr. Witt: Now, stop that, Mr. Witness. I move to strike everything the witness started to say after he answered the question about Chase Powers began to talk about other Communists. That's typical of this witness and—

Mr. Kelley: Now then, I—

Mr. Witt: Just a minute, Mr. Kelley. I ask that this witness be directed to answer the question to the best of his recollection. When he has done so I ask that he be directed to stop and not to go on and act as counsel for the prosecution.

The Court: The original difficulty may have come from my denying Mr. Deikman's motion to start with. I think probably the question in the first instance calls for simply an answer of yes or no that he had mentioned the name, and so I think this can be stricken; and then if you wish to inquire about when it was and what was said, you may do that.

Mr. Witt: That's what I want to do.

The Court: So this last answer the jury will disregard, and the answer can stand that he had mentioned whatever this individual's name was in these discussions with the FBI.

Mr. Witt: All right, sir.

Mr. Kelley: May it please the Court, we ask that the remarks of counsel characterizing this witness be stricken from the record and that he be instructed not to so badger

Agent Emil Rothfass, and Special Agent J. F. Sullivan about Chase Powers?

A. I don't recall a specific inquiry as concerning Mr. Powers; I was interviewed by Mr. Sullivan on occasions.

Q. All right, I wil then show you again Defendant's Exhibit B for identification and ask you to look at that and see whether that doesn't refresh your recollection that on that date, December 28th 1955, you were interviewed by the two agents whose names I just gave you?

Mr. Kelley: May it please the Court, inasmuch as reference is being made to an exhibit specifically and the witness is being asked about the contents of the document, it seems to me that we had better admit them into evidence, and we are willing to stipulate at this time that they be received in evidence.

OFFER IN EVIDENCE

Mr. Witt: All right, Your Honor, I will accept that offer and stipulate that this particular document, Defendant's Exhibit B, be admitted in evidence.

Mr. Kelley: And Exhibit A, too.

Mr. Witt: I am not ready to discuss that.

The Court: What is this exhibit number?

[fol. 306] Mr. Kelley: Exhibit B.

Mr. Witt: The stipulation goes only to B, your Honor.

The Court: Exhibit B will be received in evidence, and either of you can read from it if you wish.

(Defendant's Exhibit B was received in evidence.)

Mr. Witt: All right, then before the witness continues, to refresh his recollection may I read it to the jury?

The Court: All right.

Mr. Witt: This is Defendant's Exhibit B, which is a copy of a letter or a report from SAC, Detroit, to SAC, Seattle, dated January 5, 1956:

"Kenneth Eckert, representative of the Die Casting Workers, UAW, AF of L, CIO, 408 Notre Dame, Grosse Point, Michigan, was interviewed by SA Emil Rothfass and SA J.F. Sullivan on December 28th 1955. Eckert, a self-admitted member of the Communist Party, 1932-1948, has

testified on behalf of the United States Government in various trials and hearings.

"Eckert, a former union official of the Mine-Mill & Smelter Workers, advised that he (Eckert) and Chase Powers were among the members of the CP Steering Committee in the Mine-Mill & Smelter Workers, 1946-1948, at which time he, Eckert, broke with the CP:

"According to Eckert the CP Steering Committee meetings were held before the meetings of the International Executive Board of the Mine-Mill & Smelter Workers, at which time Mine-Mill policy, party decisions and major decisions were discussed. During that period Chase Powers was a member of the executive board of the Mine-Mill & Smelter Workers. Eckert stated that he knew Chase Powers as a CP member from approximately 1945 to 1948, however he had never seen Powers' CP card since both belonged to different branches of the CP.

"Eckert advised that he would not furnish a signed statement and would not testify to the information set forth above. He stated that the time factor involved in testifying [fol. 367] would not enable him to carry on his current union responsibilities. In addition, Eckert indicated that in testifying in matters of this type it placed him in a very damaging position within his union."

By Mr. Witt:

Q. Now, Mr. Eckert, having heard that read, and asking you again to take all the time you need to look it over, I will ask you again whether you now recall that occasion on which you were interviewed by those two agents of the FBI?

A. I recall occasions. As to the specific occasion, Powers was one of many, many Communists I was interrogated about. I have no doubt but what that is substantially what I probably said at the time, but I don't remember the occasion or where or when. It was just one of a number of people I suppose they were asking me about.

Mr. Witt: I move that part of the answer be stricken in which he referred to "many Communists," after Powers.

The Court: The answer will stand.

Q. Do you recall now on any occasion, Mr. Eckert, either

and castigate the witness. It is for the jury to determine from his testimony, not from the words of counsel, as to his credibility.

The Court: I think the rule is, as I have explained to the jury a good many times, that they are the sole judges of the credibility of the witness, and the comments of counsel and the remarks of counsel, of course, are not evidence and should not be considered as evidence. You may proceed on your cross examination.

By Mr. Witt:

Q. Now, Mr. Eckert, did you talk to the FBI on only one occasion about Chase Powers or on more than one occasion?

A. I don't recall whether it was more than one or not.

Q. But, apparently you do recall at least one, is that right?

[fol. 298] A. Yes, at least one.

Q. And what you told them about Powers being a members (sic) of the Steering Committee, is that right?

A. I started to tell you what I told them.

Q. You got done telling us, didn't you, that Chase Powers was a member of the Steering Committee. I didn't ask you anything else, did I?

A. My recollection is that I informed—

Q. I didn't ask you what your recollection is, Mr. Eckert. Wait for my question. Now, on that occasion that you do recall, you recall when that was that you were talking about Chase Powers?

A. Well, it was after 1948; I don't recall just when it was.

Q. Can you fix that a little more closely as to any time between 1948 after you left Mine-Mill and the time you took the witness stand in this trial last week?

Mr. Kelley: May it please the Court, it seems to me it is wholly irrelevant when he may have talked to him unless they have some specific report in mind, because there is nothing to tie in this line of questioning with his testimony on direct examination.

The Court: The question may be preliminary.

Mr. Witt: It obviously is preliminary.
The Court: The objection will be overruled.

Q. Do you remember the question, Mr. Eckert?
A. Yes.
Q. Can you answer it?
A. Yes.
Q. All right, sir, answer it.
A. I don't recall when I may have talked to the FBI about Mr. Powers.
Q. The best you recollect now is that it was sometime between June, 1948 and January, 1958, is that right?
A. Well, it was certainly sometime in that period, all right. I would think it was sometime between 1948 and 1955, one or more occasions; I don't remember.
Q. Mr. Eckert, I will ask you this: Do you recall when it was that you talked to the FBI about Travis or Mine-Mill, when it was that you talked to the FBI about Travis or Mine-Mill the last time before you took the witness stand in this trial last week?

Mr. Kelley: Does that question presuppose he was talking about Travis and Mine-Mill?
[fol. 299] Mr. Witt: Yes, I thought that was included in the question.

Q. I am asking about talks to the FBI about Travis or Mine-Mill, and I am asking when the last time was that he talked to the FBI about Travis and Mine-Mill before he took the witness stand here last week.
A. Well, here in Denver I have made remarks to the FBI man here concerning Travis casually.
Q. When was that?
A. Last week sometime.
Q. What was it you said to the FBI man casually about Travis last week?
A. I said, "Travis has gotten pretty fat since the last time I saw him."
Q. Anything else you said to the FBI man? Incidentally, who was that FBI man, Mr. DeCook?

The Court: I don't know that this is relevant unless you point it up to some statement that has some bearing on the weight of the testimony.

Mr. Witt: These are all preliminary, Your Honor, with a witness who has such difficulty remembering I try approaching it in different ways, but I will try it some other way, Your Honor.

Q. Now, Mr. Eckert, I am not asking you about talks to the FBI about whether Travis got fat or not or what he is having for breakfast, I think you understand that, Mr. Eckert—

Mr. Kelley: May it please the Court, the Government objects to his interjecting things, "I think you understand that." I think he is trying to characterize the witness' ability to answer the questions. The witness is perfectly able to understand and draw conclusions from proper questions and answers.

The Court: That is the province of the jury. You may proceed.

Q. Mr. Eckert, I will ask you again when is the last time you talked to the FBI about Travis or Mine-Mill before you took the witness stand in this proceeding last week and gave the FBI information about Travis or Mine-Mill?

The Court: I think that question is improper as being too broad. You are leaving to the witness to judge whether it related to something that pertained to this case or something else. You asked the same question and he mentioned about Mr. Travis' weight, and that is no matter of concern for the jury or the Court or anybody else.

[fol. 300] Mr. Witt: I will rephrase it, Your Honor.

The Court: If you have any specific matter you wish to ask him about you may do that, but I don't think that this general question just like you asked about relating him to the Mine-Mill or anything else is sufficiently definite that the witness can answer intelligently.

Q. All right, Mr. Witness, I will ask you when the last time was that you told the FBI anything about Travis that you testified about in your direct examination on the witness stand in this trial?

A. Well, I have no recollection of any—if I understand the question correctly you don't want casual conversations I may have had with Mr. DeCook here; you want official

inquiries which might have been directed to me and my replies, if I understand the question?

Q. That's right, I think you understand that, Mr. Eckert, so answer the question to the best of your ability and recollection.

A. I don't have any recollection of the FBI as such asking me about Travis, at least since I testified in the previous trial here.

Q. I didn't ask you that, Mr. Eckert; I didn't ask you when the last time was after you testified in the previous trial. Without reference to the previous trial or anything else I was asking you when the last time was that you talked to the FBI about Travis and told them anything about matters you testified to on direct here, when the last time was before you took the witness stand here last week.

Mr. Kelley: May it please the Court, I think that that whole dissertation was in the nature of an argumentative question. The answer that the witness gave to the previous question, or at least started to give, was an honest and good faith attempt to answer his question, and then we get this long talk about trying to characterize the witness' ability to answer the question again.

The Court: Your argument is of the same nature on the other side that Mr. Witt's is on his side. I think if both of you would refrain from commenting about the witness or counsel. I don't think Mr. Eckert did answer if he recalls when the last time was that he talked to someone, as Mr. Witt has asked, within the limitations of that question.

If you recall, Mr. Eckert, you can so state. I think you [fol. 301] have mentioned the thing in general terms, but if you can specifically recall you might so state. If you can't you can so answer.

A. Well, I don't recall when the last time was.

Q. Do you recall when the last time was before you took the witness stand here last week that you talked to the FBI about Mine-Mill?

A. Your Honor, I am confused as to what is meant by talking to the FBI.

The Court: I think you have pursued it far enough unless you have some specific question.

Q. Now, Mr. Eckert, you said a moment ago that you told the FBI that Chase Powers was a member of the Steering Committee. Did you tell the FBI when it was that Chase Powers first became a member of the Steering Committee?

Mr. Kelley: The Government objects to that as irrelevant.

The Court: I am inclined to agree. What is the relevancy, Mr. Witt?

Mr. Witt: This is preliminary, Your Honor. I have some material I want to use.

The Court: Ask him again; ask him what the statement is. Ask him if he told them a certain specific thing and then if you have something that challenges that, that's the way to use that. You are asking him just general questions.

Q. All right, Mr. Eckert, did you tell the FBI that Chase Powers attended the meeting at which the Steering Committee was set up?

A. Well, I think I may have in a general way.

Q. You told them in a general way when it was set up, is that it?

A. Yes, I think in a general way.

Q. What do you recall you told them about when the Steering Committee was set up?

A. Well, I told the FBI in response to some questions concerning Mr. Powers and other people that I had testified before the CIO in a trial of the Mine-Mill & Smelter Workers by the CIO, that I had spent considerable thought in giving that testimony, that I had a transcript of that testimony, and that if they would take that, that would answer the questions concerning Mr. Powers and other people about whom they were inquiring.

[fol. 302] Mr. Witt: Now, I move to strike that answer and ask that the witness be directed to answer my question as to what he told the FBI about when the so-called Steering Committee was set up.

Mr. Kelley: I suggest that we have the question and the answer read back. I think it was exactly in answer to the question.

The Court: I am going to overrule the motion to strike, and the question will stand, and the answer.

Q. All right, I will ask you now according to your recollection of what you told the FBI, of what you told the CIO, when—

The Court: You ought to fix a time, Mr. Witt.

Mr. Witt: That's the purpose of my examination. I have something I want to use to impeach the witness with.

The Court: But, you have to fix the time of the statement. That's the point I am making exactly. You have to fix what he is supposed to have said and the time of the statement.

Mr. Witt: He has already answered that to the best of his recollection. He said he talked to the FBI about Powers sometime between 1948 and 1955.

The Court: If you are prepared to show a contradiction, you know when the statement was made presumably that you claim was contradictory, and that's the statement you should inquire about.

Mr. Witt: I have more than one, Your Honor, and I have already tried to get the time out of this man as to when he talked to them about Chase Powers, and the best he could do was to say it was between 1948 and 1955.

The Court: But, you know, I assume, if you are asking the question, you know the time of the alleged contradictory statement, and that's the thing that the witness' attention must be directed to, not a whole general course of conduct. It seems elementary to me that if you are going to impeach a witness or contradict the witness that the first step to it is that the witness' attention be called to the time and place [fol. 303] and what was said, and then ask if he made that statement. If he says he didn't, why then you can offer whatever you have by way of contradiction.

Mr. Witt: May I ask to have this document marked Defendant's Exhibit B for identification?

(Defendant's Exhibit B was marked for identification.)

Mr. Witt: If the Court please, and ladies and gentlemen of the jury, there has been marked as Defendant's Exhibit B for identification a document which appears to be a letter from the SAC, Detroit, to the SAC, Seattle. SAC, I take it, Mr. Kelley, standing for "Special Agent in Charge"?

Mr. Kelley: That's correct.

Mr. Witt: This document being dated January 5, 1956, and Mr. Kelley agreed that this document is authentic, being a photostatic copy which has been turned over to the defense.

Mr. Kelley: We stipulate to that.

Q. All right, Mr. Eckert, I will ask you to look at Defendant's Exhibit B for identification and ask you first whether that refreshes your recollection as to when it was that you talked to the FBI about Chase Powers?

Mr. Kelley: If the Court please, the Government objects to that for the reason that it is immaterial when he may have talked to the FBI about Chase Powers.

The Court: I think the question is preliminary; I will overrule that objection. You can object to anything that is irrelevant.

Mr. Kelley: I object to even going into this exhibit for the reason that it shows no consistency with the testimony of this witness.

The Court: He hasn't offered the exhibit and the Court doesn't recall what is in the exhibit, so let him answer the question.

The Witness: What is the question?

[fol. 304] The Court; You can read it to him.

(The last question was read by the reporter.)

A. It refreshes my memory to the extent that apparently I had more than one conversation with the FBI about Chase Powers.

Q. All right, Mr. Eckert, I will ask you whether that document refreshes your recollection about the conversation with the FBI about Chase Powers at that time, the time related to the date on that document?

Mr. Kelley: May it please the Court, the date that appears on the document may or may not have anything to do with the information contained in the body of the instrument.

The Court: He is simply asking him, if I understand it, if this refreshes his recollection as to what he said at the time indicated. That's the question.

Mr. Kelley: No, as I understood the question he wanted to know if it refreshed his memory as to the time he had the conversation which is the subject of the report, is that correct?

Mr. Witt: That's correct.

The Court: That's what I thought I said, just when the conversation took place.

Mr. Witt: That's all I have asked him now, Your Honor.

The Court: Let me hear the question.

(The last question was read by the reporter.)

The Court: I think you can answer the question.

A. I don't recall this specific interview with the agent.

Q. Now, Mr. Eckert, I understood you to say a moment ago that it refreshes your recollection that you talked to the FBI about Chase Powers on more than one occasion. Now, I will ask you whether you recall the dates of any of those occasions when you talked to the FBI about Chase Powers?

A. No, I don't recall the days.

Q. Do you recall any occasion on which you talked to the [fol. 305] FBI about Chase Powers at which time you advised the FBI that you did not care to testify on that matter?

Mr. Kelley: May it please the Court, that is irrelevant.

The Court: I think I will sustain the objection on the basis it is not specific. Counsel when he asks questions which are designed to contradict or to impeach the witness knows what the testimony is or what the statement is that he intends to rely on, and ask the witness over a period of years he ever made such and such a statement, that is one thing. I don't know how it would ever amount to showing a contradictory statement. A counsel knows, if at a certain time the witness allegedly made some contradictory statement he can fix the time of the statement from his information and ask the witness if at that time he didn't say so and so or didn't make such and such a statement. This general questioning as to ever making a statement of that kind I don't think is proper cross examination.

Q. Mr. Eckert, I will ask you whether you recall being interviewed in Michigan on December 28th 1955 by Special

that one or any other occasion, on which you advised the FBI that for any reason you preferred not to testify in any of these proceedings?

Mr. Kelley: The Government objects to that.

The Court: I will sustain the objection.

Q. Now, in that statement, Mr. Eckert, Defendant's Exhibit B, which I read to the jury, according to what the FBI said you told them, you told them that Chase Powers was a member of the Mine-Mill, or rather the CP Steering Committee and Mine-Mill during the period from 1946 to 1948. Now, I think in your direct examination you testified that the Steering Committee was set up either late in '45 or early in '46, am I correct in that, is that your recollection?

A. It was set up about that time; I don't remember the specific question propounded to me here.

Q. I will ask you then without reference to your direct examination what your present recollection is now as to when the meeting was held at which the Steering Committee was set up?

A. My recollection is late '45 or 1946.

Q. When you say late '45 you mean after September, [fol. 308] after October, what period?

A. Well, after September. I don't recall just when it was set up.

Q. And in what city did that meeting take place?

A. My recollection is that it was Chicago.

Q. And when you say it may have been early '46, what is the latest month you intend to fix by that answer?

A. I wasn't thinking of any specific month.

Q. I will ask you to think about it now and tell us in view of your answer that it was set up either late '45 or early '46, when your present recollection now is that it would be the latest time in '46?

A. Well, my recollection is that it was either the last part of 1945 or early part of '46, probably within the first four or five months, I am not sure which.

Q. Now, don't you recall testifying on direct examination here last week that there was a meeting of the Steering Committee before the executive board meeting of Mine-Mill which began on February 6, 1946?

A. Mr. Witt, I recall—

Q. '46 rather, '46?

A. Mr. Witt, I recall testifying to the facts as I know them. I don't have a mental transcript in my mind. I don't recall the questions asked of me.

Mr. Witt: I am sorry, Your Honor—

The Court: The record is here; the jury will recall that. I don't think you need to argue with him.

Mr. Witt: No, I don't care to argue with him, but I need it to pursue my line. It will take just a moment. Again his answer surprises me; he testified to it last week.

The Court: You are talking in general terms.

Mr. Witt: We will be at it in a moment, Your Honor. I am being as specific as I can.

The Court: Further, he said that he is now figuring the early part of '46, any time in the first four months or so, and the date you mentioned was within that time. I don't know the point to it.

Mr. Witt: We will be ready in a moment, Your Honor. My own recollection was apparently mistaken, and, ladies and gentlemen, I want to correct the record, so, I will go [fol. 309] directly to his testimony last week.

Mr. Kelley: May it please the Court, I do not quite get that point.

The Court: I do not either.

Mr. Witt: This is all preliminary, your Honor. I cannot do it all in one question.

The Court: I do not get the point of the argument or whatever you wish to call it you seem to be having with the witness now.

Mr. Witt: I have no argument with the witness. I just want to tie this down.

The Court: Proceed with your questions.

Q. Mr. Eckert, do you remember being asked the following questions and giving the following answers on your direct examination in this trial last week, page 92, "Question: Will you state what the Steering Committee was? Answer: The Steering Committee was a Committee designated by the Communist Party to co-ordinate the work of the Communist Party inside the Mine, Mill & Smelter Workers. Question: Now, did you state about when the

Committee was organized? Did I ask you that? Answer: Yes. Question: I missed the answer. Will you repeat it, please?" The Court at that point said: "He said in 1946." And the Court was referring that point to page 91 where the witness was asked by Mr. Kelley, "Do you recall about when that was organized? Answer: Well, my best recollection is that it was organized early in 1946." Now, going back to page 92, after the Court said, "He said in 1946. Answer: I said that was my best recollection, early in 1946. Question: And where was the Committee organized? Answer: In Chicago, Illinois. Question: And was there any meeting in connection with the organization of this Committee? Answer: Yes, there was." Do you remember those questions and answers, Mr. Eckert?

A. Well, I remember questions that have been asked me about this subject in hearings. I don't know specifically whether it was asked in this hearing or not.

Q. You don't remember whether you gave those answers to those questions here last week on January 14?

[fol. 310] A. I don't remember all the questions asked of me, no.

Q. All right, I will ask you whether you recall Mr. Kelley's asking you at page 92: "Question: Do you recall who was present at the time the Committee was set up? Answer: Well, some of the people present were John Williamson, Gil Green, Maurice Travis, Chase Powers, Al Skinner, Mr. Fred Fine, a Mr. Sanderson, Harold Sanderson were among those attending that meeting." Do you remember that question and that answer last week?

A. I remember them being at the meeting, but I don't remember the specific questions that were asked of me.

Q. Do you remember testifying last week, Mr. Eckert, about a meeting of the Steering Committee which was held prior to the February, 1946, Executive Board meeting of Mine-Mill?

A. February what?

Q. Before the February, 1946, Executive Board meeting of Mine-Mill.

A. I remember the meeting. I don't remember whether the question was asked me or not.

Q. Let me refresh your recollection. Let me ask you whether you recall testifying last week on January 14 on this trial

in answer to questions by Mr. Kelley, as follows: "Question: Now, directing your attention, Mr. Eckert, to February, 1946, I will ask you whether or not there was a Steering Committee meeting held immediately prior to a Mine-Mill Executive Board meeting. Answer: There was a Steering Committee meeting held immediately prior to a meeting of the International Executive Board about that time. I am not sure it was February. It was early in the year." Do you remember those questions and those answers?

A. I remember the meetings. I don't remember the specific questions asked.

Q. All right, sir, since you remember the meetings I take it you remember that one. So, I will ask you, was there a meeting of the so-called Steering Committee in February, 1946, attended by Chase Powers among others prior to the Executive Board meeting of Mine-Mill?

A. It is my recollection that there was a meeting of the Communist group at that time prior to that meeting.

Q. When you say "Communist group", Mr. Witness, you are referring to the Steering Committee?

A. The same people.

Q. Pardon?

A. Yes, generally, yes.

Q. Isn't that what you called this meeting in your testimony last week?

A. We had practically the same meeting before the—

Q. Answer my question, Mr. Eckert.

Mr. Witt: I move that that answer be stricken.

[fol. 311] The Court: Oh, no, I think you are just arguing largely with him. I do not see any contradiction or anything else in what we are talking about.

Mr. Witt: I think your Honor should withhold comments until I complete the whole line. It takes me time to examine this witness, and I think I should be permitted to go ahead.

The Court: You may go ahead.

(Document marked Defendant's Exhibit C for identification.)

Q. Mr. Eckert, I will ask you first whether you recall a

Mine-Mill Executive Board meeting in Chicago in February, 1946.

A. Yes, there was one about that time. I think it was February.

Q. Do you recall whether Chase Powers attended that meeting?

A. Well, I don't recall whether Powers was at that meeting or not.

Q. Was Mr. Powers the Executive Board member from District 7 at that time?

A. Well, he was the Executive Board member. He was on leave about, somewhere around there. He was a Board member officially.

Q. All right, since you apparently have some recollection now that Mr. Powers was on leave about that time I will ask you whether you have any recollection during what period about that time Chase Powers was—

A. I don't recall just when it was. My recollection is that somewhere back there Powers was sick for a while.

Q. Now, I refer you again, Mr. Eckert, to your testimony last week on direct examination, page 125, when Mr. Kelley asked you who was present at the Steering Committee meeting prior to the Executive Board meeting in February, 1946, and your answer was as follows: "Answer: Among those that I recall being present in addition to the members of the Steering Committee, were Maurice Travis, Chase Powers, Al Skinner, and I, Harold Sanderson. I don't recall the specific individuals who may have been there; I know that it was a large meeting, but I don't recall the names of all the other individuals." You now remember testifying last week that Chase Powers attended the Steering Committee meeting prior to the February, 1946, Executive Board meeting of Mine-Mill?

A. I don't remember whether I testified or not, but apparently I did. It so states.

Q. Is it your present recollection that Chase Powers did [fol. 312] attend that meeting of the Steering Committee?

A. So far as I can recall he did.

Q. But you don't recall whether Chase Powers attended the meeting of the Executive Board following the meeting of the Steering Committee?

A. No, I don't.

Q. Now, Mr. Eckert, I will show you Defendant's Exhibit C for identification which purports to be a copy of the minutes of the Executive Board meeting of the International Union of Mine, Mill & Smelter Workers at the Midland Hotel, Chicago, Illinois, beginning February 6, 1946, and ask you to look at that and tell us first whether you have ever seen a copy of these minutes.

Mr. Kelley: May it please the Court, the Government objects to using this type of material, because it is strictly hearsay, we have no foundation for it, and it is going into an immaterial matter and irrelevant matter. It is collateral to the issues here.

The Court: He hasn't offered it in evidence or offered any testimony or anything else. He is simply asking the witness if he knows what it is. You can make your objection when he makes an offer of proof or offers something in evidence or asks a question that relates to the matter.

Mr. Kelley: You want him to read all of this exhibit here?

Mr. Witt: All I asked him to do was to look at that document and see whether he recalls seeing a copy of those minutes.

A. Well, judging by the first page it purports to be Executive Board minutes of Mine-Mill at that time.

Q. When you were on the witness stand in the proceeding before the SACB, Mr. Eckert, you identified a copy of these minutes on direct examination, didn't you?

Mr. Vincent: I object to that, your Honor. What he identified in the SACB has no bearing in this trial.

The Court: I think I will sustain the objection.

Q. I will ask you to look at this document again, Mr. Eckert, and see whether it refreshes your recollection as to whether or not—do you mind taking it—as to whether or [fol. 313] not Chase Powers was present at that meeting of the Executive Board.

Mr. Kelley: May it please the Court, he is assuming something that is not in the evidence. He is assuming that

he recognizes that as the Board meeting. The only testimony we have is from Mr. Witt that it is.

The Court: This witness can answer if it refreshes his recollection or if it doesn't. That is all he is asking now.

Mr. Witt: That's right. I can show him a copy of a newspaper clipping.

A. It doesn't refresh my recollection any more than previously. I was in doubt whether Powers attended this meeting or not. It states here apparently the first day, I am only looking at the first day's proceedings, it doesn't show him attending.

Q. Does it refresh your recollection that at that time Travis was acting as Board Member for District 7?

A. Mr. Witt, no minutes of the Mine-Mill & Smelter Workers Executive Board could refresh my memory about anything, because they were all phonied up by the Party.

Mr. Witt: I move to strike that answer, if the Court please.

The Court: No, I think it will stand, because it goes to the very thing you are asking him, and I assume he says that this doesn't refresh his recollection.

Mr. Witt: If the Court please, I state to the Court professionally that I was present in Washington, D. C., when this man testified before the Subversive Activities Control Board and identified these minutes, this is a copy of the minutes offered by the Attorney General.

The Court: You asked him about that, and I think the witness, I do not know that he made answer, but, if that is pertinent, you can take the witness stand and be sworn, but I don't see how that is a relevant subject of inquiry. It is too collateral.

Mr. Kelley: It is not even inconsistent. He didn't say that it wasn't what purport to be the minutes. He didn't say that.

[fol. 314] The Court: He was trying to have the witness see if it refreshed his recollection, and he, the witness, said it didn't.

Mr. Witt: I will pass this for the time being, your Honor. I will come back to it.

Q. Now, I will ask you again that you have said that you don't recall Mr. Chase Powers being at the Board meeting whether your present recollection is that Chase Powers attended the Steering Committee meeting before that Board meeting.

A. He attended a meeting prior to the Board meeting of the top group of Communists inside Mine-Mill.

Q. A Board meeting?

A. Prior to a Board meeting.

Q. I am asking you about that particular Board meeting.

A. Prior to that Board meeting?

Q. If he did attend a meeting.

A. Yes.

Q. Now, Mr. Eckert, I will go back to your conversations with the FBI about Chase Powers and ask you whether aside from the conversation with the two Agents in December of 1955 you now recollect any further conversation with the FBI about Chase Powers at any time between 1948 and the time you took the witness stand here last week.

Mr. Kelley: May it please the Court, I think that has been asked and answered and gone far enough along this line.

The Court: I think it had been.

Mr. Witt: I didn't think so. I could be mistaken.

The Court: I can be mistaken too.

Mr. Witt: I think it would take less time to let him answer.

The Court: It might be shorter to let him answer the question. I think you can answer it.

The Witness: Your Honor, I am afraid I didn't get that whole question.

The Court: You may read it.

[fol. 315] (The reporter read the last question.)

A. None other than I previously testified to.

Q. Mr. Eckert, at any time after you left Mine-Mill in 1948 did you talk to any other Government Agents aside from Agents of the FBI about Travis?

Mr. Vincent: If your Honor please, the Government objects. That question is much too broad.

The Court: I am inclined to agree with you. I do not know who you mean by Government Agents. If you want to be specific, you can ask the question.

Mr. Witt: All right.

Q. Mr. Eckert, did you talk to any investigator of the McCarran Committee in 1952 before you gave public testimony before the McCarran Committee in Salt Lake City?

Mr. Kelley: The Government objects to that as irrelevant to this proceeding and not within the contemplation of 3500, and no matter what the answer might be I think it would be irrelevant.

The Court: I am not prepared to say that just on the face of this question. That question will arise when the subject matter of the conversation, if there was one, develops. I think he can answer the question which is simply, did he have a conversation with this investigator. That was the question, wasn't it?

Mr. Witt: That is the question.

A. Yes, I had a conversation with an investigator of the McCarran Committee.

Q. And when was that?

A. Sometime prior to the hearings. I don't recall just when.

Q. Where was it, do you recall?

A. Well, I am not sure whether I talked to him in Washington or in Cleveland.

Q. Do you remember the investigator's name?

A. Well, it seems to me his name was something like Connors or something like that.

Q. Did you talk to Mr. Connors on one occasion to your [fol. 316] knowledge or more than one occasion?

A. At least one occasion. I don't recall whether I talked to him on other occasions other than when I got to Salt Lake City there.

Q. All right, Mr. Eckert, I will ask you whether you recall that when you testified before the SACB on March 29, 1957, you recall being asked the following questions and giving the following answers on the subject of your talk with Mr. Connors.

Mr. Kelley: The Government objects to that for this reason: that the matter that he is trying to impeach him on now, apparently, if this is impeaching—

The Court: The Court doesn't know until he finishes the question. You finish your question.

Mr. Kelley: First, your Honor, let me make this—try to make my position clear: Nothing was testified to on his direct examination in regard to his testifying before the McCarran Committee, about any meetings there, about whether he had talked to any of the Committee representatives or anything of that nature. Now, he is bringing in testimony at some other hearing to compare with his testimony on direct examination.

The Court: I think he has a right to do that if it is relevant to his direct examination in the first instance.

Mr. Kelley: That is what I am pointing out. He said nothing about any testimony before the McCarran Committee.

The Court: That doesn't matter. Do you say, if I go over here in the court and say that Joe Smith committed a certain robbery over in the State Court and come over on the witness stand and say someone else did, do you say you cannot use my testimony to contradict me?

Mr. Kelley: I do not see the relevancy.

The Court: I do not know what the question is. Complete the question, and then I will see what your objection is. What is your question? Proceed. You need not answer until the Court has ruled on it.

Mr. Witt: Will the reporter read the question up to this point, please?

[fol. 317] (The reporter read the last question.)

Q. "Question: Mr. Eckert, you testified in a public hearing before the McCarran Committee at that time, didn't you? Answer: Yes. Question: Before you testified in the public hearing did you give testimony to the Committee in Executive Session? Answer: I am not sure I understand what you mean by that. Question: I will put it this way: Did you talk to any members of the Committee or any member of the staff of the Committee about the testimony you would give in the public hearing at any time before you did

testify in the public hearing? Answer: Yes. Question: Whom did you talk to? Answer: I talked to one of the investigators. I don't recall his name. Question: Would that have been Mr. Connors? Answer: What is the name? Question: Mr. Connors. Answer: I believe it was Mr, Connors and one other investigator. Question: Mr. Sourwine? Answer: I don't recall speaking to Mr.—"

The Court: I think that everything that has been read is consistent with his testimony.

Mr. Witt: I am coming to it.

The Court: Ask him the part that contradicts his statement.

Mr. Witt: I am finishing it off where it took place. I am going to refresh his recollection, and then I am going on. Just two more questions and answers.

The Court: All right.

Q. "Answer: I don't recall speaking to Mr. Sourwine prior to that. Question: On this occasion when you talked to Mr. Connors was Senator McCarran or one of the other Senators present? Answer: Not that I can recall. Question: Where was it you talked to Mr. Connors? Answer: The first occasion that I recall was in Cleveland, Ohio." Now, Mr. Eckert, I will ask you whether that refreshes your recollection.

The Court: Let me ask you—complete your question. Before you answer I want to have time to consider it. Proceed and ask your question.

Q. Did that refresh your recollection that you talked to Mr. Connors in Cleveland, Ohio?

[fol. 318] The Court: Where is there any contradiction in that and what he has testified to now?

Mr. Witt: Your Honor, he said he could not remember where it was, and I refreshed his recollection as to where it was preliminary to the other questions I want to ask him.

Mr. Kelley: He said it was either in Cleveland or Washington. Counsel is misstating the question.

The Court: I think it is collateral. Unless something more specific can be developed, I think it is right on the

borderline. The only thing you are trying to establish is that the meeting was in Cleveland, is that all?

Mr. Witt: As preliminary to asking him the questions I want to ask him.

The Court: He said it was in Cleveland or some place.

Mr. Kelley: I think he did. I think the record was clear that he said it was either in Cleveland or Washington, he didn't remember which place.

Mr. Witt: I want to go on with my question.

The Court: Does that refresh your recollection as to whether the talk was in Cleveland or Washington?

The Witness: Your Honor, at this moment I am not sure whether it was Washington or Cleveland.

The Court: Very well.

Q. All right, Mr. Eckert, when you talked to Mr. Connors on that occasion whether it was in Cleveland or in Washington did you tell him anything about Travis relating to the matters you testified to on direct examination here last week?

Mr. Kelley: The Government objects.

The Court: I do not think you need to answer that question. You can ask him if in that conversation, if he didn't state as follows, not interrogate him whether the thing was [fol. 319] mentioned, because if you have anything to impeach him or contradict him about, you know what it is, and the witness has a right to answer specifically as to that, and you should ask him, in that conversation did you state as follows.

Mr. Witt: Your Honor, may we approach the Bench a minute.

In Chambers

Colloquy Between Court and Counsel

The Court: The question I had in my mind is this: It is just a question of getting more or less straightened out on procedure. To impeach on contradictions, as I understand the rule, the witness must be asked if he didn't make the following statement at such and such a time and place. Then if he denies he did, why, proof can be offered that

he did make the contradictory statement. If he said he did make the statement attributed to him, then the contradiction, if there is such, appears in the record.

Now, it seems that simple to me, and these questions about a general subject I don't believe are within that rule.

Mr. Witt: Your Honor, that's why I was anxious to approach the bench, because Your Honor seems to me to keep anticipating what we are trying to do. Now, we are trying to do two things: one, we are seeking to impeach him in the usual way by showing prior contradictory statements or testimony, as for example I try to do with respect to Powers being in Chicago in February, 1956.

Now, maybe the confusion arises because I alternate, but if I do it is because of the character of the answers I get out of this witness; but, in any event I wanted to approach the bench to indicate to Your Honor the purpose of this line about his talk or talks with the investigators for the McCarran committee. This line is not for the purpose of impeachment, Your Honor; this line is for the purpose of making the record with respect to our demand under Section 3500.

Now, all we have gotten from the Government are copies of documents in the possession of the FBI. With respect to those we want to try to show that there are other documents in the possession of the FBI related to the subject matter of this man's testimony to which we are entitled under Section 3500.

[fol. 320] Now, as we tried to say the other day, in addition to documents in the possession of the FBI, as we see it under Section 3500 we are entitled to copies of statements as the word "statements" is defined in Section 3500, given to any agent of the Government; not merely to an agent of the FBI, and as we read that, Your Honor, "agent" includes investigators for the legislative branch of the Government. There is no distinction; Section 3500 doesn't refer to statements given to an agent of the executive branch of the Government. It simply refers to any agent of the Government.

The Court: Shouldn't that be developed before the Court? That isn't a question for the jury under any set of circumstances, is it?

Mr. Kelley: Nor is it matter within the knowledge of the witness.

Mr. Witt: We will do it either way as long as we make a record.

The Court: The jury, for instance, is never advised about what is withheld from them or what is given them or anything else, and if there is any question that you think, withholding of reports within the meaning of 3500, I would think it ought to be presented to the Court as a separate matter from the jury. I am asking you where the jury would ever enter that field at all.

Mr. Witt: Well, Your Honor may well be right on that. Perhaps the difficulty is that since we can't get an answer out of the prosecutors on this we have to interrogate the witness about it. Now, perhaps in order to make our record in connection with our motion for the production of these documents we should interrogate the witness out of the hearing of the jury.

The Court: It would seem to me that that would be the proper course, because I can't quite see where this fact would enter into the jury's deliberations at all. It is a question of production of matter under 3500.

Mr. Witt: All right, this is quite a problem. Let me state the entire problem as we are prepared to develop it so that Your Honor will know what we have in mind so that we don't do it piecemeal.

[fol. 321] The Court: All right.

Mr. Witt: We would just as soon do it all at once in one way, as long as Your Honor understands what we are after. Now, that's one problem, or rather two thus far. I want to interrogate him further about any other statements to the FBI in addition to those that have been given to us which relate to the subject matter of his testimony.

Two, I want to interrogate him about statements made to other agents of the Government.

The Court: Do you mean about the existence of the statements or the fact that a statement was made as distinguished from a contradictory statement?

Mr. Witt: That is right, the fact that a statement was made.

The Court: I think that foundation ought to be probably laid out of the presence of the jury.

Mr. Witt: All right, let me finish with what else we have in mind and perhaps we can do it all at once outside the presence of the jury. This is in connection with our effort to make a record not only under Section 3500, but with respect to our position as to grand jury testimony, but let me finish as far as Section 3500 is concerned.

There is another branch, too, that Your Honor will recall, which we raised, and that has to do with statements made to attorneys in the employ of the Department of Justice or employees of the Government. Your Honor knows our position now on that. It is that statements made by a witness, even if made to attorneys employed by the Government, should be produced for use under Section 3500, and we make the distinction between statements made by the witness as distinguished from what is called work product under Hickman vs. Taylor, and we want to make a record on that, and the only way we can do it is to ask this man if he has talked to Government attorneys, and develop that to see whether he has talked to them about the subject matter of his testimony. Now, so much for 3500.

The other branch of this whole line, Your Honor, has to do with his testimony before grand juries. There, too, we [fol. 322] are not doing that for impeachment, because we don't have his testimony before the grand jury; but, as we see that we have to interrogate him first as to whether he has testified before grand juries. I think he has already more or less answered that part of it, and then we have to ask him whether he has testified before grand juries about the matters which he testified to on direct, to lay a foundation for our demand that his grand jury testimony be produced for us, and it is our position, if the Court please, that since it is unlikely he will say that he gave inconsistent or contradictory testimony before grand juries, it is our position that if he answers that he doesn't remember with respect to any of the matters he testified to on direct, then that is sufficient foundation for the production of the grand jury testimony, at least to Your Honor if not to the defense.

The Court: The basic question I am interested in first is whether that should be done out of the presence of the jury

before the Court, the laying of this foundation with respect to the existence, let us call it, of other statements or with reference to the fact of whether or not he did this, that or the other thing. Offhand, I think that's a matter purely before the Court because the jury isn't concerned with it one way or the other.

Now, anything that tends to contradict, why, that's a question for the jury on the question of credibility. This wouldn't have any relationship to credibility or anything else, just as to the existence or the conditions relative to what you claim are other statements that the Government should furnish under 3500 or under some of these other theories you have.

Mr. Witt: We can do it that way.

Mr. Kelley: May I suggest something, Your Honor?

The Court: All right.

Mr. Kelley: Mr. Witt, I haven't read all of the SACB transcript, but it was pointed out here in court that he had asked the witness as to his discussions with agents of the McCarran Committee. Now, it may be that he has asked him about all these other things. If he has then on the basis of that he can make an offer of proof, and couldn't we take it from there somewhat without having to repeat all of that [fol. 323] stuff, make an offer of proof on that basis, and the Court could rule on it from that standpoint?

The Court: If he lays that foundation; I don't know a thing about it.

Mr. Witt: Maybe we can simplify it this way. We are still not too sure of the Government's position.

Mr. Vincent: Your Honor, if I am not mistaken, I thought Your Honor had already ruled in our first introductory conference on 3500 in regard to statements made to the congressional committees and the work product of attorneys and preliminarily on grand jury.

The Court: I don't recall, but I did rule on the congressional committee hearings. I know that I said that I didn't think it was a casual matter that applied to work efforts by attorneys, and I didn't rule on that. I gave my then opinion, which I still have, but sometimes I change my mind, and that's about anything which would be in the

category of work papers or work sheets or something prepared by an attorney in preparation for trial.

Is there any disagreement about the fact that it ought to not be a part of the testimony before the jury, but it would be a matter for resolution by the Court in connection with determining what they are entitled to under 3500, or these other theories that they have?

Mr. Witt: We have another problem about that as far as the jury is concerned, Your Honor, and why we think these lines of interrogation should be permitted before the jury; perhaps with some explanatory or cautionary instruction from Your Honor, and that is the question of this man's credibility.

The Court: I agree with you, and up to date within a certain limit. Like, for instance, you can ask him if he talked with attorneys or the FBI recently with the idea that the jury might make some inference with respect to the weight to be given his testimony; but, I don't think that would go to the question of the contents of the discussion or the statement of the discussion. That's where it seems to me the weakness of asking him what was said, because he may [fol. 324] have talked, for instance, to Mr. Kelley or to someone else about this case and still have no direct relationship to anything he testified to on direct examination.

There has to be some kind of limit of relevancy there.

I am not saying what I am thinking very clearly, but someplace in the thing, you can't just cover it by a broad question, for instance, "Did you have a discussion of the subject," or something like that.

Mr. Witt: Your Honor, since we don't have, for example, a copy of any statement he made to Mr. Connors of the McCarran Committee, we have to approach it indirectly to show that any statement made related to the subject matter.

The Court: You can ask him if he made a statement and all those things, but the contents of it is what I am getting at.

Mr. Witt: If we don't show anything about the contents we haven't laid a foundation for our position under Section 3500. We have to show that the contents has some relation to the subject matter of his testimony.

The Court: Under 3500 is a matter for the Court to determine on the basis of the statement. The first thing that you have to show is he made a statement to a Government agent, period. Then following the procedure of that, why, you can say, "We want that statement." Then the United States attorney can say, "Well, here it is, but we don't think it is relevant to the matter of the cross examination," and then the Court will determine that. That can't be determined on the basis of his testimony out here in the courtroom, I don't think.

The fact of the statement or whether such a statement was made, I think, is a proper subject of inquiry, but not out in the courtroom, but I would think in here, because I can't see where it has any relationship to the jury on the credibility angle. Now, if you would give me your views on that.

Mr. Witt: As I see it now up to this point, Your Honor, we have a man who on direct examination testifies to specific dates, places, the substance of what was said, going back at least to 1942, from 1942 to 1948, and when we get to cross examination on matters that the ordinary person would [fol. 325] have a good recollection about—for example, when he talked to the FBI, and especially when we asked him about particular subjects—he has no recollection. We think that is examination that bears on his credibility which the jury should know about.

The Court: That's a question for the jury, and you can argue all that to the jury, but I don't know what the Court can do about it. It has to be within the area of the direct examination or something that would relate to it, and of course the things you mentioned have been admitted for that very purpose, and you can say to the jury the very thing you just said to me, "Here is a man that on direct examination remembered everything and on cross examination doesn't at all." I think that's a question for the jury.

Mr. Witt: But if we pursue this whole line of interrogation outside the observation and hearing of the jury how will we be able to make that point to the jury in summation?

The Court: I am asking you in any of this conversation about the fact of whether he made a statement to somebody, how would that have any bearing on his credibility, under what theory?

Mr. Witt: Not on the fact that he made a statement, but the way he answers those questions bears on his credibility and his manner in answering them.

The Court: Just take this precise situation; you have him testify that he talked to this gentleman, this Mr. Connors or whatever his name was, the investigator for the McCarran Committee, he had a conversation with him. Now, there is no showing that he made a statement or signed a statement or anything else. Now, assume you asked him if he made a signed statement.

Then I think it would be appropriate for you to say, "We want that from the Government," and then we will proceed from there; but, if he made any specific contradictory statement to this man that can be established you can say, "Didn't you tell Mr. Connors such and such a thing," and if it is relevant here it will be admissible if it contradicts the testimony on direct. It looks just that simple to me. To ask him about the general topic of the conversation or some general subject, I think is within any rule of contradiction or even under the rule you are talking about.

[fol. 326] Mr. Witt: Your Honor, as I said, we are not seeking to contradict him with this line. How can we? I am trying not to shoot in the dark with any of these questions. I don't want to guess whether a witness, particularly a witness like this, and I am not doing it for that purpose, Your Honor. I can't roam all over the place and try to drag a contradiction out of him; I don't expect to do it. That's not the purpose for this line.

The purpose for this line is to support our demand for copies of these statements he made to other Government agents, and as I said, we will get to the question of U. S. attorneys; but, on the question of his credibility—

The Court: Let's stay with the first. Now, where is there any justification on that theory for asking the witness what was said in the statement unless it is contradictory?

Mr. Witt: Just to lay some basis for showing on the subject matter of his direct testimony, but if Your Honor wants us to stop there, I will be glad to if you will decide this issue and then ask the Government to produce any statements.

The Court: If he has given a written statement to someone or a statement that comes under the definition of 3500 you are entitled to a ruling on, you are entitled to a ruling whether they shall produce it when it develops that he did make such a statement, and then the question whether it pertains to the scope of his direct examination will be for the Court when the statement is produced.

Mr. Witt: That simplifies it.

The Court: What do you think about that?

Mr. Kelley: I think if we have to build a record that way, that would be the simplest way rather than trying to find out what the contents of the document might be if one does exist. The chances are, unless he signed a statement, he wouldn't know whether there was a statement made or not. Somebody might make a note or two or might go back and put something down from memory, and this witness would have no knowledge of it; but, the whole thing, it seems like we are getting so far afield. Here they have got this man's testimony on many, many occasions relating to this same subject matter; they have cross examined him. In [fol. 327] the trials where he has testified to these events to my recollection no one has ever gone on and contradicted the general nature of his testimony. There may be some places he has put a name in, some places he has left it out.

The Court: That goes to the credibility.

Mr. Kelley: That's right.

Mr. Witt: Mr. Kelley is trying to argue his case and stop the cross examination.

Mr. Kelley: No, I am not trying to stop his cross examination.

Mr. Witt: We want to show he has never been restricted.

The Court: I don't think they should be restricted on anything that shows contradiction. They can ask if it is a fact that there were statements made, but I don't believe that unless the statements are contradictory or come in a category that they can ask for the contents of it, because if there was a statement made that is judged by the statement itself.

Mr. Witt: Your Honor, we will be satisfied with that; in fact, it will make it simpler for me. If Your Honor is

satisfied that I asked him the question as to whether he made a statement, try to get it within—

The Court: You will have to bring it within 3500.

Mr. Witt: Yes, I was about to finish and say we will try to bring it within 3500, that whatever he said on that occasion or whatever the agent did amounted to a statement as defined in 3500. Then we will stop there and we will ask for its production pursuant to the motion we have already made.

The Court: That will be the first step.

Mr. Kelley: I think one of the first things to find out is whether or not he knows whether they made a recording.

Mr. Witt: As the Court said, we will have to try to show that it is a statement within the definition of 3500. Now, so [fol. 328] we will be clear and we won't have to waste more time going over this, Your Honor, shall we take a look at the other branches of this? Then after I am done with asking him about other agents who are not attorneys I intend to ask him about attorneys, and I will follow the same course Your Honor is suggesting, that is, not go into the contents. Then Your Honor can decide as to whether we are entitled to those, and if we are Your Honor can look at them and see whether they relate to the subject matter.

The Court: I want it understood that if you know of any contradictory statements there is no limitation on that.

Mr. Witt: This whole line we do not, and we will so state for the record. The purpose of this whole line about statements to other than agents of the FBI, to attorneys, testimony before a grand jury, we are not prepared to show contradictions or inconsistencies by the very nature of the problem. We don't have any of those.

Mr. Vincent: Your Honor, I don't quite understand how the defense can elicit the information they are seeking if they don't go into the subject matter. We will be right back where we were before with their questions, "Did you ever make a statement to such and such a person?" With regard to what? There must be some relationship shown.

The Court: I think that will be a problem. For instance, since you brought that up, I want to ask how logical this is: The first step in that proceeding would be to ascertain what

the nature of this—I mean for the Court to ascertain what the nature of this McCarran Committee was. It will be assumed then that the statement would have some relationship to the hearing. I think that would be a sound assumption. Then the next step, if it appeared that it did have something to do with what his direct testimony would be, to say, if it is proper—I am using this illustratively—to say, "Well, the Government can produce a statement if it comes under 3500" and then you gentlemen can give any objection you wish as to why you shouldn't produce it; but, I think it would develop, incidentally, what the subject of the inquiry was with reference to the statement.

Mr. Witt: That, Your Honor, will be answered.

[fol. 329] The Court: For instance, if they said, "Did you make a statement to Mr. Kelley," for instance, they have to bring it under 3500, and then it would be immediately obvious, I think, or in connection with some trial, say this very trial or something else. We could determine that. It seems to me that's the only logical way to pursue it.

The only question I have is whether it ought to be done before the jury. I don't see any prejudice one way or the other basically to it as long as there is no disclosure of the contents or alleged contents of the statements.

Mr. Witt: May we talk among ourselves for a moment, Your Honor?

The Court: Yes.

(Counsel and the defendant withdraw from the room.)

Mr. Witt: All right, Your Honor. We think it will save time and perhaps help us get a clearer record if we finish off this whole line outside the presence of the jury, because actually technically as we see it this line is in support of our motion for production and is not seeking to attack his credibility or to impeach him.

The Court: What do you think about that? I am inclined to that view. Has the Government some violent objections?

Mr. Kelley: I think that is all right.

The Court: I was just sitting here thinking while you were out. I think that is much the preferable way of doing it.

Mr. Kelley: I am wondering this then if that shouldn't be the first order of business, because as I stated to the Court early in this trial, that I didn't consider that I had any authority, and I don't think anybody in the executive branch of the Government has any authority to command the production of records of the Congress, and we should develop this to a point where we can know what the Court's ruling is going to be. I might say in this connection—I don't know whether we are probably getting a little ahead [fol. 330] of ourselves—but, it seems to me that that is something that can be reached by subpoena, if any exists, and is not contemplated by 3500; but, be that as it may, it seems to me the first order of business is to develop this so if there is anything that Your Honor orders us to produce we can make the best efforts we can if it is in a field where we haven't—

The Court: I think that is probably one of the latter stages of the thing. The first thing to find out is if there are any statements by definition that come within 3500. Then the question that you talk about will be considered next.

Suppose we get into a discussion of that. It would be purely hypothetical if this witness never made any statements that come within the category of 3500.

Mr. Kelley: Of course, chances are we don't know because he is not going to know whether they made a statement on the basis of the conversation.

The Court: If we can get what was done we would have a better notion of what was done than we do right now.

Mr. Kelley: Yes, but it is the mechanical processes. Suppose that there should be something the Court would tell us that we had to attempt to produce; then we have to contact Washington to see if there is anything that they can get and give to us, and we have to submit it to you and you have to go over it, and I thought the sooner that we can get to that and then if some of it is produced they may want to cross examine on it.

The Court: I have a notion about the time schedule. We have the jury around here now. If we go on until a little after 4:00, and they say at a quarter after 4:00 or so; that would be thirty-five minutes, on other type of cross examination. I hate to be doing this, so to speak,

on the jury's time, then one thing that is possible is for Mr. Witt to make a statement about what he thinks he can establish. Then I can possibly rule on that on his own assumption. I don't know whether it would be within the rule or anything, any of these categories he is talking about. Then we will get into the specific thing secondly; but, I think we better go ahead with the regular cross examination, and have the understanding that this matter about the production of further statements or reports or further records as indicated in their request will be for [fol. 331] determination by the Court, and that evidence won't be adduced before the jury. We may want to have Mr. Eckert in here and ask him about this, that, or the other thing as part of this presentation to the Court.

Mr. Witt: I am not sure I followed your Honor. Was your Honor suggesting that I go on to other matters that will go to the jury?

The Court: Something that doesn't go into this category at all, and then we come back in here, say, at quarter after 4:00, and my own notion would be, if you can make a statement about what you think can be developed, why, then on the basis of your statement, if the Government thinks that it should not be, I will listen to that and decide as a matter of law whether that was within the category of 3500 or these other matters. I think that is the best way to do.

Mr. Witt: All right, I will try to go to other matters until 4:15.

After Recess

In Open Court

KENNETH ECKERT, resumed the stand and testified as follows:

Cross examination.

By Mr. Witt (Continued):

Q. Mr. Eckert, did you testify before the CIO about a Party meeting which took place before the Executive Board meeting of Mine-Mill in February, 1946?

Mr. Vincent: I object to the form of that question, your Honor, and the procedure involved in asking it.

The Court: Read the question, will you, Miss Marson?

(The reporter read the last question.)

The Court: He may answer the question; the objection is overruled.

A. I don't remember whether I did or not.

[fol. 332] Q. Mr. Eckert, I will ask you whether you recall making the following statement when you made your statement before the CIO in January of 1950. "The first Party meeting of note after I became Board member was held in the early part of February in the City of Chicago in the Midland Hotel. The Board meeting was about to take place in this hotel. I believe the Board meeting started on February 6 of 1946. The matter discussed was the question of moving the Vice President, Ralph Rasmussen, to Chicago. He at that time was stationed in Washington here to handle legislative matters, matters which had arisen during the war affecting the union, and to remove from the pay roll a lawyer who was on Mine-Mill pay roll full-time who came from somewhere in Utah and whose name I don't recall at this time."

Mr. Witt: May I stop at this point, if the Court please, and ask the witness whether he is referring to Willard Morris as the name he used in this connection on his direct examination?

A. Yes, I think so.

Q. Morris was the lawyer from Utah?

A. Yes.

Q. Going on then, if the Court please, ladies and gentlemen, page 185, "The Party discussed those and made decisions to advocate that those policies be carried out in a meeting of the Executive Board. It was transmitted to this caucus and discussed by the caucus, and those policies were carried out. The minutes of the Board will show that Vice President Rasmussen was transferred to Chicago and that the lawyer was dispensed with. Mr. Bernstein: Who was present at that meeting? Chairman Potofsky: Address the question to the Chair. Do you care to an-

swer the question, Mr. Eckert? Answer: I cannot remember all the people who were present at the meeting. Some of the people who were present were Travis, myself, Al Skinner, Bernard Stern—a correction, I am not sure about Stern—Sanderson, who had the capacity of Assistant to Robinson or some capacity in the International Office at that time was at that meeting. I don't think Reid Robinson was at that meeting at that time." Do you recall making that statement before the CIO, Mr. Eckert?

Mr. Kelley: May it please the Court, it seems to me it is immaterial whether he recalls whether he made that statement before the CIO or not, irrelevant.

[fol. 333] The Court: Well, I assume that in it is some contradictory matter or statement he made on direct examination.

Mr. Witt: Exactly.

The Court: Without checking the record is that true, Mr. Witt?

Mr. Witt: What I am trying to show, your Honor, is exactly that.

The Court: The objection will be overruled.

A. The events sound familiar, but I don't recall whether it is the testimony I may have given.

Q. You don't recall then that when you gave those names which I read as people who attended that meeting you did not include the name of Chase Powers, you don't recall that?

A. I don't recall the testimony that was given at the CIO trial.

Q. Mr. Eckert, at any time when you gave testimony for the Government in the proceedings you have already referred to did you receive what is called an expert witness fee in addition to a per-diem?

A. Yes.

Q. All right, I will ask you with respect to each occasion, Mr. Eckert. Did you receive an expert witness fee for testifying before the McCarran Subcommittee in Salt Lake City in October of 1952?

A. No, I did not.

Q. Did you receive a per-diem on that occasion?

A. Yes, I did.

Q. Do you recall what that per-diem was?

A. Yes, I do.

Q. How much?

A. $9.00 a day.

Q. All right, Mr. Eckert, did you receive an expert witness fee for testifying on the Jencks trial?

A. My recollection is that I did.

Q. And do you recall what that expert witness fee was?

A. My recollection is that the expert witness fee was $25.00 per day.

Q. That was in addition to your per-diem?

A. Yes.

Q. Was the per-diem $9.00 a day at that time also?

A. I am quite sure it was.

Q. Did you receive an expert witness fee for testifying before the Grand Jury in the Gold case?

[fol. 334] A. I don't remember whether I did there or not.

Q. Did you receive a per-diem on that occasion?

A. I am not sure whether I did or not.

Q. Did you receive a per-diem for testifying on the trial of Gold?

A. Well, my recollection is that I did.

Q. Do you have any recollection as to whether you received the expert witness fee for testifying against Gold?

A. Yes, I think I did.

Q. How much was that at that time?

A. If I did, it was the usual $25.00.

Q. Did you receive a per-diem for testifying before the NLRB in the so-called decompliance case in 1954?

A. Yes.

Q. And did you receive an expert witness fee on that occasion?

A. My recollection is that I did.

Q. Was that also $25.00 per day?

A. Yes.

Q. Did you receive a per-diem when you testified before the Grand Jury against Travis?

A. My recollection is that I did, yes.

Q. Did you receive an expert witness fee on that occasion?

A. I think I did.

Q. Did you receive a per-diem when you testified against Travis on the first trial?

A. Yes, I did.

Q. Did you receive an expert witness fee on that occasion?

A. Yes, I did.

Q Was that $25.00 a day?

A. Yes.

Q. Was it $25.00 a day when you appeared before the Grand Jury in the Travis matter?

A. I think it was.

Q. Did you receive a per-diem in connection with testifying before the SACB in Washington in 1957?

A. Yes.

Q. And did you receive the expert witness fee on that occasion?

A. Yes.

Q. And was that also $25.00 a day?

A. Yes.

Q. Has the prosecution discussed with you whether you will receive an expert witness fee in connection with your testimony on this trial?

A. No, they have not.

Q. How long were you in El Paso in connection with testifying in the Jencks case, Mr. Eckert?

A. I don't, I don't recall how long it was.

Q. Did you receive the expert witness fee for every day you were in El Paso?

Mr. Kelley: The Government objects to any further pursuance of this line. I think he has shown that he received—

[fol. 335] The Court: I think I am inclined to sustain the objection.

Mr. Witt: All right then, I will try a general question, and perhaps your Honor will feel differently.

Q. Mr. Eckert, are you able to tell us how much, or are you able to estimate for the ladies and gentlemen of the Jury how much you have received altogether from the

Government as expert witness fees since you first began to testify?

Mr. Kelley: That is objected to as being irrelevant, and it is a matter of computation.

The Court: I think I will overrule the objection; if the witness can estimate, why, he may so state.

A. No, I don't have, never computed it. I don't know what it is.

Q. Mr. Eckert, do you recall your direct testimony last week when Mr. Kelley asked you when it was that you met Mr. Travis?

A. I recall some question along that line, yes.

Q. Do you remember your answer?

A. I don't remember the answer. I don't remember what answer I gave.

Q. Pardon?

A. I don't remember what answer I made.

Q. All right, I will ask you now what your answer is to my question as to what year it was that you first met Mr. Travis.

A. Well, to the best of my recollection it was either sometime in the last part of 1941 or sometime in 1942.

Q. Do you remember what month in '41 or what month in '42?

A. Well, if I remembered what month it was in '41, I would not speculate in 1942. I think it was 1941 or 1942. I don't recall the month.

Q. Well, I will ask you whether you recall when Mr. Kelley asked you about that last week in the following question you gave the following answer, page 82: "Question: The first time that I recall meeting Mr. Travis was about 1942 as near as I can recall." Or in answer to Mr. Kelley's question, "When did you first become acquainted with Mr. Travis?" Do you remember giving that answer last week?

A. I think I gave an answer along that line.

Q. Do you remember your answer to that question when you testified in the first trial of Travis?

A. No, I do not.

[fol. 336] Q. Then, Mr. Eckert, I will ask you whether you

recall on the first trial of Travis being asked the following question on that matter and giving the following answer: "Question: Now, will you tell the Court and Jury when you became acquainted with Maurice Travis? Answer: In 1941." Do you remember that question and that answer on the first trial?

A. No, I don't remember the question or the answer.

Mr. Kelley: We will stipulate that that was the question and the answer.

Mr. Witt: I don't care for any stipulation at this point, if the Court please.

Q. Mr. Eckert, I will ask you whether you recall your testimony last week about the meeting at Henry Horowitz's in Chicago in 1947, and specifically I will ask you whether you recall who you testified was present at that meeting.

Mr. Kelley: I think the Court has suggested a different procedure.

The Court: I will sustain the objection to that. The record will speak for itself. You can ask him who was present and then compare it with the record or however you wish to proceed.

Mr. Witt: All right, if the Court please.

Q. Mr. Eckert, I will ask you now to tell us according to your recollection at this moment who was present at that meeting at Henry Horowitz's in Chicago, 1947.

A. Which meeting at Horowitz's house are you referring to?

Mr. Witt: The same meeting you testified about last week that you said took place before the St. Paul convention.

A. Well, the meeting that took place before the St. Paul convention, the last meeting at Horowitz's house before the St. Paul convention—

Q. Excuse me, Mr. Eckert. Do you not recall testifying last week about that meeting that took place a few days before the convention opened?

A. I am trying to differentiate between another meeting at Horowitz's.

[fol. 337] Q. I am asking you to direct your attention that you testified to about on direct examination last week which you said took place a few days before the convention opened. You have that one in mind now?

A. I have in mind a meeting at Horowitz's house that took place shortly before the St. Paul convention.

Q. I am asking you to direct your attention to the same meeting which you testified to on direct examination and tell us according to your present recollection who was present at that meeting.

A. Present at the meeting were Gil Green, Fred Fine, a member of the Steering Committee Powers, Travis, Skinner, Harold Sanderson, Irving Dichter, Jencks, Horowitz, general counsel of the Union. These were some of the people I recall as having been there.

Q. All right, Mr. Eckert, I will ask you whether you remember being asked this question last week as to who was present and giving the following answer, page 149: "Question: Now, will you name those whom you can remember who were present at that meeting? Answer: The members of the Steering Committee, Maurice Travis, Al Skinner, myself. Harold Sanderson, Chase Powers, Clinton Jencks, William Gately, Mr. Dolan, Graham Dolan I believe his name is, Irving Dichter, Herman Clott, Gil Green, Fred Fine. These are names of some of the people that occur to me who were there." Do you remember giving that answer to that question last week?

A. It sounds along the line of my reply to it.

Q. Now, I will ask you about Dolan who you said in your direct testimony last week was present at that meeting. Will you tell us if you recall what Dolan's job was with Mine-Mill at that time?

A. I don't recall whether, what job he had or whether at that time he had been given a job officially.

Q. All right, I will ask you first whether you remember giving the dates of the St. Paul convention last week.

A. Well, my recollection is that I could not recall the date of the convention.

Q. If I understood your answer now you said that at the time of the Horowitz meeting you didn't remember, you don't remember now whether Dolan had been given any job by Mine-Mill.

A. I don't recall at the moment whether he had officially been or not.

Q. Well, I thought your testimony was that all the people present at this meeting aside from the Communist Party officials whom you named, Gil Green and Fred Fine, and the general counsel were officials or staff people of Mine-Mill.

[fol. 338] A. I don't recall limiting it to staff people of Mine-Mill, because Gil Green and Fred Fine were not staff members of Mine-Mill.

Q. I laid them aside. Perhaps I didn't make myself clear. Aside from Gil Green and Fred Fine whether or not you recall in your testimony of last week with respect to this meeting as well as others you testified about you testified that the people present were officials or staff members of Mine-Mill.

Mr. Kelley: May it please the Court—

Mr. Witt: I will withdraw the question.

Q. Now, did Dolan ever get a job with Mine-Mill?

A. Yes.

Q. And what was the job?

A. With the Party or Mine-Mill?

Q. I beg your pardon.

A. His job in the Party or in Mine-Mill?

Mr. Witt: Will the reporter read the question, please?

(The reporter read the question, as follows: "Now, did Dolan ever get a job with Mine-Mill?")

A. Yes.

Q. And what was the job?

A. Well, he had several jobs. One of them he became assigned to do so-called educational work.

Q. Was that the first job he had with Mine-Mill?

A. Oh, no.

Q. All right, I will ask you what Dolan's job with Mine-Mill was at the time of the St. Paul convention in 1947.

A. I don't recall what his specific assignment was at that time.

Q. But at that time is it your testimony that he was working for Mine-Mill?

A. I don't know whether at that time he had been put back on the staff or not.

Q. Mr. Eckert, don't you recall that the job of Educational Director was established at the St. Paul convention in 1947?

A. I don't recall when it was established.

Q. You don't recall that, Mr. Eckert? You don't recall that?

A. I don't recall when it was established.

Q. You don't recall that Mr. Dolan went to work for Mine-Mill as Educational Director after the St. Paul con-
[fol. 339] vention, you don't recall that?

A. I don't recall when he went to work as Educational Director.

Q. Do you recall testifying about when the Education Department was established and about Dolan's becoming the head of it when you testified before the SACB?

A. I don't recall what the testimony was.

Q. You say you don't?

A. No.

Q. Mr. Eckert, in view of that I will read you the following answers which you gave to the following questions when you testified before the SACB on March 28, 1957: "Question: Mr. Eckert, did the International Union of Mine, Mill and Smelter Workers have an Educational Department at any time while you were Board member? Answer: Yes. Question: Do you remember when that was established? Answer: Well, my recollection is it was established sometime in the latter part of 1947 or early 1948. Question: Do you recall who became the head of the Educational Department? Answer: Yes. Question: Who was it? Answer: Cozy Dolan. Question: Is that the man who is otherwise known as Graham Dolan? Answer: I believe that is his first name, Graham." Do you remember giving those answers to those questions?

Mr. Kelley: May it please the Court, I want, this question was prefaced on a statement by counsel that this occurred at the 1947 convention, and the material he has read into the record makes no reference to that.

Mr. Witt: I am coming to that. As Mr. Kelley is so fond of saying, I can't do everything at one time especially with a witness like this.

Mr. Kelley: I object to that and think counsel should be instructed not to characterize the witness in any way. That is within the province of the jury and not for this man.

The Court: I think counsel should refrain from commenting about the witness. The objection will be overruled on the basis that counsel says it is a preliminary question.

Q. Do you remember the question?
A. I don't think so.

The Court: I don't think there was a question.
Mr. Witt: My question is whether he recalled. I guess you—
[fol. 340] The Court: You asked if he did so testify at this hearing.
Mr. Witt: Yes, give the testimony I read to him.

A. I cannot remember my testimony at these hearings.
Q. All right, I will ask you now, having heard that testimony, Mr. Eckert, whether it is your present recollection that the Education Department was established in the latter part of '47 or early '48?
A. I am not sure at the moment just when the Educational Department was established.
Q. And I take it you are not sure at the moment then as to when Mr. Dolan became the head of it, is that right?
A. Yes, I think that's right.

(Defendant's Exhibit D was marked for identification.)

Q. Mr. Eckert, I take it from your testimony here last week that you attended the St. Paul convention of Mine-Mill in 1947?
A. Yes, I did.
Q. Now, I show you Defendant's Exhibit D for identification which purports to be a copy of the proceedings of the convention, the 43rd Convention of Mine-Mill at St. Paul in 1947, and ask you whether you have ever seen a copy of that document?
A. Yes, I have.
Q. All right; now, Mr. Eckert, I direct your attention to pages 185 to 188, beginning at the top of page 185, where I am pointing, with the heading, "Committee Secre-

tary Chavez, Education Committee." I will ask you to look at that and ask you whether that refreshes your recollection that the setting up of an Education Department was agreed upon at that time at the St. Paul convention?

A. Yes, I think that these events occurred substantially in so far as I can remember them.

Q. Would that refresh your recollection that it was after the St. Paul convention that the Education Department was established and that Dolan became the educational director?

The Court: What is the point to all this? I would like to be enlightened about it. There has been no objection. What is the point?

Mr. Witt: Well, Your Honor, the witness testified on direct examination that Dolan as a person working for Mine-Mill attended a Communist Party meeting before the St. Paul convention, and I am showing that Dolan wasn't working for Mine-Mill.

[fol. 341] The Court: You asked him about this Educational Committee. I understood the witness to say that he had worked in other capacities.

Mr. Witt: The witness comes up with that answer.

The Court: The witness never testified, as I understand it, on direct examination or otherwise, that Dolan was a member or connected with this Educational Committee when he attended the meeting in question.

Mr. Witt: No, he didn't, Your Honor, but this is my way of impeaching him. I want to show that Dolan wasn't working for Mine-Mill at the time of the Horowitz meeting before the Saint Paul convention, and I have to show with this witness from testimony I think he can give, that Dolan became educational director after the St. Paul convention. Then I will take him back to the Horowitz meeting and go over that ground again.

Mr. Kelley: May I make an observation, Your Honor? It seems to me that what counsel is trying to do is to get some kind of a defense on while cross examining our witness.

Mr. Witt: I object to this speech by Mr. Kelley.

Mr. Kelley: We object to that line of procedure.

Mr. Witt: I object to that.

The Court: The Court inquired about whether there was any basis for this being in here at all; apparently he is not through yet. Go ahead.

Mr. Witt: All right. I am not sure, if the Court please, whether there is a question pending or not.

The Court: I don't think there was a question pending.

Mr. Witt: No, I don't think so either.

By Mr. Witt:

Q. Now, Mr. Eckert, did you testify about the meeting at Henry Horowitz' before the St. Paul convention when you testified against Jencks in El Paso?

A. I don't recall whether I did or not.

[fol. 342] Q. Mr. Eckert, to refresh your recollection, I will ask you whether you didn't give the following answers to the following questions—

Mr. Vincent: If Your Honor please, there is nothing at this point to identify the document from which counsel is reading.

Mr. Witt: We have agreed it doesn't have to be identified.

The Court: He can ask him if at such a time and place he didn't testify as follows, and then offer the record, if there is a denial of the thing, or something like that. Go ahead.

Mr. Witt: We have agreed that his prior testimony—

The Court: You are asking him if he testified to the following, and what case now?

Mr. Witt: All right; this is the Jencks case.

Mr. Kelley: May it please the Court, it seems to me that when you go into these things that it should be on some material matter, and we object to it.

The Court: I am agreeing with you one hundred percent on that, and I don't know what he is trying to go into.

Mr. Witt: I am trying to show that this witness did not tell the truth when he said last week on direct examination that Dolan attended a meeting at Henry Horowitz' in 1947 before the St. Paul convention.

Mr. Kelley: Again the Government objects to the characterization of the testimony by this counsel. Now, he can let the jury draw their conclusions.

The Court: He answered the Court what he was trying to prove when he answered you. Go ahead. What is it you want to read from?

Q. All right, Mr. Eckert, I will ask you whether you remember the following answers to the following questions when you testified on direct examination in the Jencks case:

[fol. 343] "Q. Do you know the defendant Clinton Jencks?

"A. Yes, I do.

"Q. Is this him (indicating) sitting here, the third man at the table?

"A. Yes.

"Q. When did you first meet him?

"A. The first definite meeting I recall with Mr. Jencks was in 1947.

"Q. 1947?"

The Court: There is no use reading all this, if there is something that is contradictory—

Mr. Witt: I am afraid of an objection from my friends. I will go right to the place where he attended that meeting.

The Court: The jury will disregard that part that he read. If there is anything that you claim is contradictory let's hear it.

Mr. Witt: All right, on page 884 where he is asked, "Who attended that meeting at Horowitz'?" and this is what is contradictory with respect to Mr. Dolan, if the Court please—

Mr. Kelley: Now, that's counsel's own testimony, Your Honor.

Mr. Witt: I am answering the Court.

The Court: He can read it and the jury will be the judge of whether it is contradictory or not, but I want to be sure that that's the same meeting. There are two meetings at Horowitz' house, as I understand it.

Mr. Witt: The witness testified on direct as to only one meeting at Horowitz' house, and if he was going to make two meetings out of it the way he has done in the past, we will get into that.

The Court: One was the identification was fixed as the date of the Diefitter's meeting in Cleveland, wasn't it?

Mr. Witt: No, sir, it had nothing to do with it. On direct examination he testified as to only one meeting at Henry Horowitz' which took place—

[fol. 344] The Court: Let's get straight on that; is that right?

Mr. Kelley: He testified in regard to one meeting, but he has stated on cross examination that there were two meetings at Henry Horowitz' house in 1947.

The Court: Does this testimony you are about to read from relate to the meeting that he testified to on direct examination?

Mr. Witt: Yes, it does, Your Honor, and if the witness believes it doesn't, if he is going to develop some other meeting, then we want to get into that. I have had that experience with this witness before where two or three or four meetings grow, where he testifies at the beginning only to one, when he is faced with a contradiction.

Mr. Kelley: May it please the Court, I think in fairness to the witness if he is going to ask him about that he should give him the testimony to examine and let him read enough of it—

The Court: No, he is proceeding in the right manner. He can ask him if he testified, if the following question was asked and he gave the following answer. Go ahead, Mr. Witt.

Mr. Witt: All right; I was trying to.

The Court: If there is anything else you can bring it out on redirect. Go ahead.

Mr. Witt: I was trying to get to these names he mentioned in the Jencks trial, page 884, as being present at this meeting at Horowitz'.

By Mr. Witt:

Q. "Q. You recall who was present at the meeting?

"A. Well, in addition to Travis and myself there were the other two members of the Communist Party Steering Committee in Mine-Mill, Mr. Chase Powers from the West Coast, Mr. Al Skinner, then from Chicago, Mr. Jencks from the Southwest, Mr. Dichter from New York, Mr. Sanderson who was a national representative of Mine-Mill in the Chicago office, Mr. Bernard Stern, the research

director of the Mine-Mill & Smelter Workers, and other key Communists inside Mine-Mill,"

[fol. 345] Mr. McTernan, one of counsel for defense, moved to strike that last portion, and the Court—

Mr. Kelley: May it please the Court—

Q. —and the Court sustained the objection, Your Honor. Now, Mr. Eckert, I will ask you whether you recall giving those names in answer to that question when you testified against Jencks?

A. I recall the people being there, but I don't recall these volumes of testimony, what I may have given at various times.

Q. But, did you know, Mr. Eckert, when I read that testimony of yours from the Jencks case, you didn't say on the witness stand in the Jencks case that Mr. Dolan was present at Henry Horowitz' on that occasion, did you?

A. Did I notice it?

Mr. Kelley: Just a moment; the Government objects to that as argumentative.

Mr. Witt: I withdraw the question.

The Court: I think at this time—it is nearly half past 4:00—and I have to see counsel, that we will recess until tomorrow morning at 9:30.

* * * * * * *

In Chambers

The Court: Getting to the question of the defense developing that they are entitled, as I understand their contention, to the production of additional statements and the like, we discussed at the last recess, I have been thinking about the matter ever since we were in here, and I don't know of any way of proceeding except to let them offer whatever evidence they wish to offer with respect to the alleged existence of anything that they claim comes within the category that should be produced, and you can proceed from there. I thought at first we might have a statement of counsel or something, but I don't expect that will add to the thing, so my own thinking right at the moment is

that we will just have to get Mr. Eckert in here and let them interrogate him about the existence of any material that they think should be produced, and proceed from there.

Do any of you have any notion how we might more ex-
[fol. 346] peditiously proceed or anything?

Mr. Kelley: I think it is counsel's job to say whether they feel that that is the proper procedure, because they are the ones that are trying to make the record on it, and I wouldn't want to suggest anything that they might feel was not—

The Court: How do you gentlemen feel?

Mr. Witt: Yes, we think Your Honor is right, having given it further thought, whether Your Honor does it in chambers or in open court with the witnesses, but we think Your Honor is right in suggesting that it be done with the witness outside the presence of the jury, and instead of having counsel make general statements about their position. We think it will make a better record if we interrogate the witness.

The Court: Is he still around here?

Mr. Kelley: Yes, I have him in court.

The Court: He might come in. We have fifteen minutes now. If we can't get through we can start at 9:00 in the morning and have him here then, whichever is more suitable.

Mr. Witt: I am very fatigued; I would rather recess now.

In Chambers

* * * * * * *

[fol. 358] Colloquy Between Court and Counsel

The Court: I expect we may as well get Mr. Eckert in.

Mr. Witt: We are ready. Before getting to Mr. Eckert, one isolated problem before he comes in. Before the witness Eckert comes in there is one matter in connection with his testimony about his relationship with the FBI that we think should be discussed outside of his presence, and that has to do with his talk with the FBI in Detroit or in Michigan, I do not think it is clear where in Michigan, whether it was Detroit or Grosse Pointe, with the FBI in April, 1953, about testifying before the Jencks Grand Jury. There

is no part of the record, your Honor, the telegram from the FBI in Detroit to the Director of the FBI and SAC, Albuquerque, with reference to that matter. I think it is [fol. 359] Defendant's Exhibit A.

Mr. Kelley: I believe it is Exhibit B.

Mr. Witt: Well, the record will show.

Mr. Kelley: Is it Exhibit A which wasn't admitted?

Mr. Witt: I think that was admitted.

Mr. Kelley: Exhibit B was the one that was admitted.

Mr. Witt: It doesn't matter. Instead of referring to it as its designation as an exhibit I will just stand on the description which we are familiar with. That telegram is dated April 8, 1953, and I do not think the prosecution will dispute my statement as shown by the record in the Jencks case that Jencks was indicted on April 20, 1953. The telegram indicates that the Government was interested in having Eckert testify against Jencks before that Grand Jury.

Now, actually, as we see it, that telegram does not come within the definition of statement in Section 3500, because it is a communication internal to the FBI, and our conclusion is that, since it is clear that the FBI in Detroit talked to Eckert about Jencks at that time, there must be a document in the files of the FBI which does come within the definition of "statement" in 3500. Now, this matter is of considerable importance, your Honor, as we see it, because that telegram states only that Eckert could testify about Jencks in connection with Jencks' attendance at Communist Party meetings in St. Paul during the convention of Mine-Mill beginning on August 20, 1947. As it later turned out, the witness apparently did not testify before the Jencks Grand Jury according to his testimony here, but, as we know, he did testify in open court in the trial of Jencks in January, 1954. At that time he testified not only about Jencks and the St. Paul convention but also testified that Jencks was present at this, I think I can call it now this famous Horowitz meeting immediately prior to the St. Paul convention. So, we are entitled to draw the inference that when Eckert talked to the FBI in Michigan in April of 1953 he did not tell the FBI that Jencks was present at the Horowitz meeting, because, if he had, then it would follow that the telegram from the FBI Detroit dated April 8

would have referred to that matter. Instead, as I said [fol. 360] and as we know, it refers only to the St. Paul convention. So, we have serious suspicions about what happened here, but we could easily be wrong, but in any event the prosecution can clear the suspicions up very easily by either producing the statement which should be in the files of FBI Detroit or FBI Washington or FBI Albuquerque or FBI El Paso, the statement which Eckert made in April, 1953, or, as an alternative perhaps the prosecution could state for the record that they have looked for that as they would be required to do as shown by that telegram dated April 8 and can state professionally to your Honor that there is nothing in the FBI files anywheres underlying that telegram or which specifically amounts or could amount to a statement by this witness pursuant to the definition of "statement" in Section 3500.

The Court: Well, I do not know exactly your point, what you are making. The Government the other day told the Court and the Court accepted as true that they submitted to the Court as basis for the defense demand under 3500 all of the material or matters that they had that related in any way to the provisions of 3500. The Government looked that over, and the Court may have been more liberal than was proper in permitting this telegram to be given to you. It may not be a statement under the exact definition of 3500, and the Court, as I said, may have been overliberal in giving the thing, but I know of no statement along the line you mention that was in this material at all.

Mr. Witt: Well, that is not the point now, your Honor. Just to be—

The Court: The Government has announced that they gave the Court everything they had, so, I think that is a closed incident.

MOTION UNDER SECTION 3500 RENEWED AND RULING THEREON

Mr. Witt: Just to make the record and to be as technical as we know how to be we hereby renew our motion under Section 3500 specifically with respect to any statement by this witness whether made to FBI Detroit or to FBI Detroit in April, 1953, or at any other time dealing with Clinton

Jencks, and we think the least we are entitled to is a statement by the prosecution that there is nothing in the files of the FBI anywheres dealing with that subject matter.

[fol. 361] The Court: I do not think the Government will be required to make that statement, because the record was very clear the other day on their production, and the Court in the exercise of discretion conferred within 3500 looked the matters over, and the Court has given to you everything that the Court conceives you are entitled to under 3500, and the Court, of course, in the event there is a conviction and appeal, the matter will go to the Court of Appeals, and I do not wish even to discuss the details of these other matters that were withheld, and, so, that will have to rest on that basis.

MOTION TO REQUIRE GOVERNMENT TO ADVISE DEFENDANT THE AGENTS WHO INTERVIEWED WITNESS ECKERT

Mr. Witt: Finally, on this matter we have an alternative motion, we move that the Court direct the prosecution to advise the defense what Agent or what Agents interviewed this witness in Michigan in April, 1953, so that the defendant will be in a position to subpoena that Agent or Agents if it decides to do so.

Mr. Kelley: I think the telegram which you state you weren't entitled to contains the names of the Agents.

Mr. Witt: I think Mr. Kelley is mistaken about that. I can be wrong, but we can check that very easily.

Mr. Deikman: Just to make the record clear, it is Exhibit A that Mr. Witt is talking about.

The Court: All right.

Mr. Witt: Your Honor, as far as I can see there is no proper name. This is unsigned so that we can only speculate that before the Government handed this over to your Honor that the name of the signatory to this telegram was removed.

Mr. Kelley: I was thinking of the other one that was admitted, I think it said by whom he was interviewed, Exhibit B, but I think in view of all the discussion that relates to this Exhibit that it ought to be in the record some way. Whether it is in the record for the purpose of reading it

to the Jury, I don't care about that, but it is merely the identification of it to keep it in the record on appeal.

The Court: What is that?

[fol. 362] Mr. Kelley: It is the mere identification of the stuff to keep the exhibit in the record.

The Court: I would think so.

Mr. Kelley: Whether it is received in evidence or not—

The Court: It hasn't been received in evidence. The other has been. I expect there is sufficient identification of it to show it is in there. As I say, apparently, the Court being possibly overliberal in sorting the matters submitted gave this particular instrument when it may not have been a statement under 3500 at all. It related to something that purportedly Mr. Eckert said, and for that reason I included it. I do not know that anything further can be done about the matter.

OFFER IN EVIDENCE

Mr. Witt: Just to complete the record, your Honor, may we have that particular exhibit for identification admitted in evidence in view of that?

Mr. Kelley: We have no objection to it.

The Court: Then Exhibit A can be admitted in evidence.

(Defendant's Exhibit A for identification received in evidence.)

Mr. Witt: We have a motion pending now that, the last motion I made that your Honor direct the prosecution to turn over to the defense the name of the Agent or the names of the Agents who interviewed Eckert in Michigan in April, 1953.

The Court: What is your position about that?

Mr. Kelley: I don't know. I would like an opportunity to discuss that with counsel.

The Court: All right, you can do that, and then at the next conference we can decide what you wish to do about it.

Mr. Witt: Just one other matter before the witness comes in. We notice in examining the documents that your Honor turned over to us, what I will call the FBI docu-

[fol. 363] ments, that some obvious omissions occur on certain pages. Take this one as an example, this is one dated

under the heading at the top of the first page on what is called Form No. 1 under the heading "Date When Made" it bears the date of 10/30/50 made by David A. Wible whose name we have already here at Cleveland, Ohio, and the first page relates to something Eckert said about Jesse VanCamp, but the top of the page is blank showing what seems to us an obvious omission. We are not making a great to-do about it, but would that indicate that that is something that your Honor took out as being irrelevant after your Honor examined this document?

The Court: Yes. As I understand, the Court's duty under 3500 is to excise from the material submitted the portions that the Court does not believe comes under the provisions of 3500 as being properly furnishable to you. Where those blank spaces appear in what is submitted to you it was simply something that didn't come within the rule that they brought in when they made the photostats.

Mr. Witt: All right. There are several others. I take it from what your Honor just said pertaining to those that is the situation. There is one in particular we would like to refer to. This is what is apparently a letter dated May 8, 1950, from what appears to be the Cleveland office of the FBI to the Director of the FBI, and it bears the subject heading "Maurice Eugene Travis", and your Honor will recall that two-thirds of that page is blank. What we have left is only that one paragraph about five-eighths of the way down the page. I raise the question about this one in view of the heading or title of that letter which is the name of the defendant in this case. So, we would infer from that that everything which was contained in the original—

The Court: As the Court has pointed out, to the best of my ability I performed the functions conferred upon me by 3500, and the portions excised were excised in accordance with my understanding of the rule, and also as was agreed upon in the very beginning, as I understand the method of operations, that the Government would take the original form, the Court would indicate what was excised, and that would be omitted when the matter was photostated for submission to you. That is what it amounts to.

Mr. Witt: Thank you, your Honor.

[fol. 364] The Court: Now, can we get Mr. Eckert in?

(Mr. Eckert entered the Court's Chambers.)

The Court: In this examination I wish you would in the interest of brevity not go into matters covered in the Courtroom as much as you possibly can.

Mr. Witt: I will try to, your Honor.

KENNETH ECKERT, testified as follows:

Examination.

By Mr. Witt:

Q. Mr. Eckert, in the Courtroom yesterday I had begun to ask you some questions about your interview with Investigator Connors of the McCarran Subcommittee. I don't recall whether you said there was another investigator present. Was there?

A. My recollection is that there was not another investigator present at that time insofar as I can recall, that is, the prehearing conversations I had with this investigator, and I am not referring to any conversations I may have had in Salt Lake City, well, during the hearing or immediately prior to it. There may have been other people present at that time. I don't recall.

Q. I missed the beginning of your answer. Did you say your recollection now is there was no other investigator present with Mr. Connors in Cleveland or Washington, I think you said yesterday?

A. I don't recall another investigator being there at that time. There may have been. I don't remember.

Q. All right, will you listen to this, Mr. Eckert: When the witness was cross-examined before the SACB on March 29, 1957, he testified on this matter at page 1159 at the bottom of the page: "Question: And whom did you talk to? Answer: I talked to one of the investigators. I don't recall his name. Question: Would that have been Mr. Connors? Answer: What is the name? Question: Mr. Connors. Answer: I believe it was Mr. Connors and one other investigator. Question: Mr. Sourwine? Answer: I don't recall speaking to Mr. Sourwine prior to that."

The Court: I think you read that to him in the Courtroom yesterday, Mr. Witt.

[fol. 365] Mr. Witt: Just to get the continuity at this point, your Honor. Perhaps this is also repetitious, but I will try to avoid it. I think we will be done possibly with repetition with this question.

Q. Did you have one talk with Connors or more than one talk in some city other than Salt Lake City?

A. I had at least one talk with Mr. Connors in a city other than Salt Lake City. My recollection is that I met Mr. Connors in Salt Lake City just prior to the hearing. Whether I had conversations that pertained to the case or not I don't recall.

Q. I was asking you about conversations before you got to Salt Lake City, conversations with Mr. Connors in Cleveland, Washington, or any other city aside from Salt Lake. Is your answer that you recall only one other conversation in a city other than Salt Lake?

A. That is the only conversation I can recall at this time.

Q. Now, at that time—strike that, please. You testified when you did in Salt Lake City in October, 1952, about Travis and Mine-Mill, didn't you?

A. At Salt Lake City?

Q. Yes.

A. Yes.

Q. When you talked to Mr. Connors on the only occasion you remember before you got to Salt Lake City did you talk to him about Travis and Mine-Mill?

A. Well, I talked to him about Mine-Mill. I don't recall whether I talked to him specifically in regard to Travis or whether I handed him this CIO proceedings which I did on a number of occasions to other people, and I may have told him the information in this document.

Q. Aside from the CIO document do you recall whether you talked to Mr. Connors about any matters relating to Travis or Mine-Mill about which you testified on direct examination in this current trial?

A. I don't recall the subject of conversation with Mr. Connors other than generally in reference to this CIO trial and in regard to testifying.

Q. Aside from the CIO document did you give Mr. Connors anything in writing?

Mr. Vincent: We object to that question, anything in writing. It doesn't convey anything.

Mr. Witt: All right, perhaps Mr. Vincent is right.

Q. Did you give Mr. Connors anything in writing relating to Mr. Travis or Mine-Mill and specifically relating to [fol. 366] the matters you testified to on direct examination in this trial?

A. By writing, you mean my writing?

Q. Your writing.

A. I don't recall having given him anything in my writing.

Q. Did you give him anything in anybody else's writing about these matters aside from this CIO document?

Mr. Kelley: The Government objects to that as not within 3500.

The Court: What is your notion on that? The question here is whether he gave him a written statement or anything in writing of his own. I mean, if, for instance, if he handed him a newspaper or some other document, I do not see how that would come under 3500.

Mr. Witt: Well, it depends, your Honor, suppose, to take your Honor's example, suppose he gave Mr. Connors a newspaper clipping bearing on this subject matter as your Honor defines it and said, "Here is the story on it which I can testify about," as we read the definition of statement under 3500 that would come within it, because the witness has adopted—

Mr. Kelley: I think that is probably right. The definition of "statement" that we are dwelling on at this moment says, "A written statement made by said witness and signed or otherwise adopted or approved by him."

The Court: All right, he can answer it.

Mr. Kelley: I think it has got to include the "adopted" or "approved" to be a proper question.

Mr. Witt: This is preliminary. If he says he gave him something, I can ask him.

The Court: All right. Do you recall the question? Maybe you had better ask another question.

Q. Mr. Eckert, did you give Mr. Connors anything in writing (sic) in writing aside from the CIO document deal-

ing with any of the matters you have testified to on direct examination in this trial?

A. I don't recall having given him other matters or I don't recall having given him the CIO matter. I am not sure of it.

[fol. 367] Q. Now, I think you stated that you recall only one session with Mr. Connors before you got to Salt Lake City, is that right?

A. That is all I recall, yes.

Q. On that occasion did Mr. Connors take notes of what you were saying to him?

A. I don't know whether he did or not. I doubt it.

Q. I think you also said that you talked to Mr. Connors again when you got to Salt Lake City before you took the witness stand, is that right?

A. I think, yes, I did talk to Mr. Connors before then.

Q. Did you talk to him about Travis and Mine-Mill and specifically about any of the matters which you have testified to on direct examination in this trial?

A. The only thing I can recall talking to Mr. Connors at Salt Lake City when I got there other than the casual exchange of greetings, I don't recall whether there was any further prehearing discussion or not.

Q. But you do recall talking to him?

A. I recall meeting him there and exchanging greetings with him.

Q. Beyond that do you recall discussing any of the matters which you have subsequently testified to about when you took the witness stand before the McCarran Subcommittee?

Mr. Kelley: That has been answered about two or three times.

The Court: I think he has answered it two or three times. You can answer it again so there will be no question. I think you said you didn't recall anything about that.

A. I don't recall whether there were or were not other conversations.

Q. Aside from Mr. Connors did you talk to any other member of the staff of the Committee about the matters you subsequently testified about in those hearings?

A. I recall no other discussions with him outside of being introduced to a couple of them. I don't recall any discussions relating to the testimony. There could have been. I don't know.

Q. Now, Mr. Eckert, aside from the FBI and the staff of the McCarran Subcommittee I now ask you whether at any time before you took the witness stand in this trial last week you talked to any Agent of the Government from any department other than lawyers or attorneys about any of the matters you testified to on direct examination in this trial.

[fol. 368] Mr. Vincent: We object to that, your Honor. It calls for a conclusion of the witness.

The Court: Well, it does in a way, but it might simplify asking him the detail of it.

(The reporter read the last question.)

The Court: The question to me is rather vague, and I do not know that it is understandable. Do you mean from 1942 on to now or what do you mean?

Mr. Witt: At any time, your Honor. It doesn't matter under Section 3500. Of course, I think your Honor has in mind 1948. It doesn't matter. I think we are entitled to ask him about any time.

The Court: Well, that puts an awful burden on a man's recollection. I don't know exactly what you mean by agents of the Government or something of that sort, and the mere talking to them implies nothing. I mean, for instance, he might have talked to a Congressman or a half a dozen other different people about some phase of the case at some time between 1942 and now. I think I will sustain the objection, because the question is too general. If you wish to ask him if he made a written statement or anything that comes within the definition of the statute, why, I think that might be proper.

Mr. Witt: Your Honor, I have to ask him some questions especially since his recollection seems to be incomplete on almost anything. I can take two hours and break this question down, if your Honor prefers it. I will try it some other way.

Q. Mr. Eckert, at any time after you left Mine-Mill in 1948 did you talk to any person employed by the Government other than a lawyer or an attorney, other than a member of the Federal judiciary, other than a member of the Congress or the United States Senate about any of the matters you testified to on direct examination in this trial?

Mr. Crandall: I object to that. When he goes in to employees actually, it is extremely broad in that connection.

Mr. Witt: They object to agent. They say it is a conclusion.

[fol. 369] The Court: I do not know that conversations are involved here. What I thought we were going into is whether the witness had made any statements as they are defined in 3500, and the mere casual talks, he may have met someone down in the lobby of the hotel and asked him what the baseball game score was that day.

Mr. Witt: Or whether Travis was getting fat or not. Your Honor, I am not interested in that particularly with this witness. I have to ask him a preliminary question. If it is a casual conversation, if someone from the Immigration Service asked him if he knew Travis and that was it, we will drop it. But we should have some way of getting at it. If your Honor prefers to ask the preliminary questions, I would be delighted, but I am sure, if I asked him if he made any statement as defined in Section 3500, one of our friends on the other side would object that I am asking him for a legal conclusion. So, I am trying to make it as simple and put it in as simple and as lay language as possible. If it developes if his answer is "yes" to that, it was a casual conversation, it was about what he had for breakfast or what Travis had for breakfast, we will drop it.

The Court: Let him answer this last question, and we will see where we get with the thing. Read the last question to him, will you, Miss Marson?

(The reporter read the last question.)

A. Well, it is possible that I have—this would include National Labor Relations Board proceedings on petitions for elections, as I understand the question?

Mr. Witt: I ask that the witness be directed to stop wasting time. The witness knows what is going on, your Honor,

and I asked him about the matters he testified to on direct examination. He didn't testify to anything about NLRB proceedings, and I think this witness is permitted by your Honor to go entirely too far in interfering with my examination.

The Court: I am not prepared to say that that would not be something that the witness could have in his knowledge and you would not and neither would I, and I think the answer can stand, and you can proceed with your answer.

[fol. 370] A. I have received requests from the Immigration Department on several occasions to testify. I don't recall whether any of those inquiries, requests to testify concerned people or matters that I have testified to here on direct examination or not.

Q. How many requests have you received of that nature from the Immigration and Naturalization Service?

A. I don't know of the number. I could not say what the number is.

Q. Do you remember whether they asked you about any of the people connected or affiliated with Mine-Mill whose names you had occasion to mention in your direct examination?

Mr. Vincent: I object to that question, your Honor.

Mr. Kelley: I think it would have to be as to a material matter on his direct examination, not whether a person's name was merely dropped.

Mr. Witt: Again, it is preliminary, your Honor. I cannot put everything in one question, and then there will be the objection—

The Court: I think we will save time by letting him answer the question—the Jury isn't here—if he recalls about the matter.

Mr. Vincent: I might say there is nothing in that question that shows that it relates to the substance of this trial.

The Court: I agree with you entirely, but he says it is preliminary to something else. I mean the first step in the proceeding is whether he talked with somebody, and then we can go from that to something else if it does develop that he did.

A. I don't recall whether any of those requests related to people I have mentioned in this trial or not.

Q. All right, Mr. Eckert, you recall mentioning the name of Allen McNeal during your direct examination in this trial?

A. Yes.

Q. At any time did the Immigration and Naturalization Service ask you questions about Allen McNeal?

Mr. Vincent: Your Honor, the Government objects to that.

[fol. 371] The Court: What is the point to that, and how under any theory would that material be available to you under any rule here?

Mr. Witt: I would like to argue that, but I would prefer doing it outside the presence of the witness.

The Court: I think I will sustain the objection.

Mr. Witt: Well, your Honor, I would like to be heard on it outside the presence of the witness. If you do not want to ask the witness to step out, I would like to be heard on it in his presence.

The Court: Well, tell me briefly.

Mr. Witt: My recollection is that in the course of his direct examination the witness testified that he had a conversation with the defendant Travis in California in 1942 in the course of which Travis told him about Allen McNeal who was in the International Office of Mine-Mill and told him that Allen McNeal was a Communist and would tell him about the work of the Communists in Mine-Mill. I am trying to summarize that. Now, I want to find out from this witness whether he talked to the Immigration and Naturalization Service about Allen McNeal's being a Communist and whether he talked to the Immigration and Naturalization Service about his conversation with Travis in California in 1942 about Allen McNeal.

The Court: Well, what if he did? Let's put it that way.

Mr. Witt: I haven't taken the name "Allen McNeal" out of a hat, your Honor. I represent to your Honor professionally that I know there were some proceedings instituted by the Immigration and Naturalization Service in-

volving Allen McNeal, and that is why I am asking the witness about him. If he did, I want to find out.

The Court: The conversations he had are not relevant. The substance of them is not relevant unless there was something, the purpose of this, as I understood, was to develop whether or not there was something you are entitled to under 3500 and under some of these other contentions [fol. 372] that you make that should be produced by the Government. It is not a question of interrogating this witness about the conversations he had but the fact of whether there were any statements made or anything of that sort that you would be entitled to under the statute or under some of these theories. Now, I think that is very clear. It seems to me that this approach is getting into a field far away from that.

Mr. Witt: Your Honor, I am entitled to show under 3500, if we are right in our conclusion, and I do not think there can be any question about it, that a person representing the Immigration and Naturalization Service comes within the definition of agent of the Government in 3500, and we are entitled to show whether the statement he made, if he did make the statement as defined in 3500, contradicts the testimony he gave.

The Court: Not in the way of a casual conversation.

Mr. Witt: Of course not.

The Court: If he made a statement, I think you can ask him if he had any conversation with him and as a result of that he made any statement or something of that sort, not what was said and what was done, unless it was in the form of a statement, something that would be producible.

Mr. Witt: That is a legal conclusion. The witness doesn't know how a statement is defined in 3500, and I have to find out what happened. But I will do it the way your Honor suggests.

The Court: Proceed.

Mr. Witt: I take it you are anticipating overruling an objection of the Government. But I will make the record.

Q. Mr. Eckert, did you make any statement to any person representing the Immigration and Naturalization Ser-

vice about Allen McNeal and specifically your conversation with Travis in California in 1942 about Allen McNeal?

A. I don't recall having been asked or giving statement, written or otherwise, regarding Allen McNeal.

Q. And I think you said you don't recall the names of any other persons that have been connected or affiliated [fol. 373] with Mine-Mill whom that Service asked you about, is that right?

A. That is not the way I understood your previous question.

Q. I am sorry. Then, answer the question—

Mr. Kelley: The statement reflects his answer.

Mr. Witt: I am sorry if it doesn't seem clear.

Q. I will ask you, if it doesn't, aside from Allen McNeal, whether you have any recollection about giving a statement of any kind to a person representing the Immigration and Naturalization Service about any person connected or affiliated with Mine-Mill whose name you had occasion to mention in your direct testimony in this trial?

Mr. Vincent: The Government objects to that, your Honor. Again, there is no relevancy to this question.

The Court: I will let him answer instead of taking 20 minutes for argument. If we get down, if there is any question of whether there were any statements, we will consider it then. You can answer, Mr. Eckert.

A. I don't recall having discussed with the Immigration and Naturalization Service the names of people I gave here other than I may have given to the agents of that department of the Government copies of the CIO trial proceedings.

Q. Now, aside from the Immigration and Naturalization Service I will ask you whether you at any time have talked to any other person, any agency or department of the Government aside from the Immigration and Naturalization Service about any of the matters you have testified to on direct examination.

The Court: Well, that doesn't exclude FBI that he admitted he testified to.

Mr. Witt: Do you want me to get it all in one question? I want to save time, but I will put it that way if your Honor prefers.

Q. Excluding the FBI, excluding the Immigration and Naturalization Service, excluding lawyers and attorneys employed by the Government, excluding the Federal judiciary, excluding members of either House of Congress, I [fol. 374] will ask you whether at any time you have talked to a person or an agent of the Government about any of the matters you testified to here under direct examination.

Mr. Crandall: Your Honor, it is very broad when he says any person in the Government.

The Court: I think I will let him answer this question.

Mr. Kelley: Let him go, Bob.

A. You have not excluded the NLRB again, Mr. Witt.

Mr. Witt: I think the witness ought to stop wasting time.

The Court: I do not think the witness is wasting time. He answered the question once before, and I think the record will show he answered it in practically the same form. It may have included the Immigration Bureau and didn't before. So, you may go ahead and answer, just continue your answer.

A. Well, your Honor, there are a number of Government people in the course of my work I come in contact with which have not been excluded here including the U. S. Conciliation Service, National Labor Relations Board.

Mr. Witt: Your Honor, I asked the witness about the matters he testified to on direct examination, and I suggest again that the witness is interfering with my examination.

Mr. Kelley: I think it is completely possible he might have discussed some of these matters with them without their contacting him officially about it. It might have been the subject of a friendly conversation.

Mr. Witt: We are trying to find out. If it was, it is not a statement within 3500.

Mr. Kelley: That shows the ridiculousness of the procedure.

Mr. Witt: It shows the ridiculousness of the law.

If the Congress had left the law alone, we would not be wasting time.

[fol. 375] The Court: The witness has said it doesn't exclude the numerous people he may have talked to. What the purpose of the question is I gather is to ascertain whether he talked about any of the matters included in the direct examination with any of these agencies of the Government other than have been mentioned here or mentioned by you in the course of your testimony. Do you recall any other agencies?

The Witness: Well, your Honor, in the course of these conversations with the National Labor Relations Board, U. S. Conciliation Mine-Mill matters have arisen, and it is entirely possible that some of them were dealt with on direct examination. Now, I want to answer the question correctly. Other than those, the Immigration, the FBI, there is another Government agency or official that I talked with about myself in regard to registering under a law regarding having received training by a foreign government in sabotage, espionage, and other matters, and I had conversations with them, and in the course of that conversation it is entirely possible that Mine-Mill may have entered the conversation. I don't recall. I don't recall any other people of the Government in the categories Mr. Witt has asked me about that I have talked to knowingly or knowing who they were about any of these matters.

Q. Who was it you talked to about having received training in espionage and sabotage?

Mr. Vincent: The Government objects to that.

The Court: I will sustain the objection.

Mr. Witt: Your Honor, this witness testified on direct examination that he attended schools in Moscow, and I take from this answer that in talking with this particular agent of the Government he talked to him about his attendance at schools in Moscow, so, this relates to the subject matter on the direct examination.

The Court: I will sustain the objection. I think that is entirely irrelevant to ask a witness if he ever talked to anyone about a general subject. If there is anything

specific, why, or something of that sort, why, it might be proper, but I think that question is entirely improper.

[fol. 376] Q. All right, Mr. Eckert, in talking to this particular agent of the Government and telling him about what you know about espionage and sabotage did you have occasion to tell him you had attended schools in Moscow?

Mr. Kelley: That is objected to. We weren't permitted to go into any of the subjects that he was taught at that school.

Mr. Witt: We are not going into those subjects, your Honor, but your Honor denied our motion to strike his testimony about attending schools in Moscow, so, it is part of the subject matter of his direct examination. That is all I am asking him about.

The Court: Well, I didn't hear him say that he talked to anybody about all of this you are including in your question.

Mr. Witt: I am trying to find out whether he talked to this particular agent with whom he says he discussed espionage and sabotage about the fact that he, Mr. Eckert, attended schools in Moscow.

The Court: With respect to what he testified to on direct examination he testified to nothing about that on direct examination, and it clearly would not be within the scope of his testimony on direct examination. In fact, you were very careful about objecting to any testimony going into that field, and the Court went along with that idea, and the Government voluntarily refrained from examining about the details of these teachings and so forth, and, so, I think on the face of your question it is obvious that could not have been a subject that related to his direct examination at all.

Mr. Witt: Your Honor, we are not going into his teachings. This question is whether he told this particular person or agent of the Government that he attended schools in Moscow. Your Honor has permitted that testimony of his on direct examination to stand.

The Court: You can ask him that question.

Mr. Witt: That is the question.

The Court: No, it is not. You asked all about espionag and all of those things.

[fol. 377] Mr. Witt: I could be mistaken.

The Court: You can ask him wherever this was, the fact he went to school in Moscow.

Q. Will you answer the question as his Honor has just put it, Mr. Eckert?

A. What is that question?

Mr. Witt: Will Miss Marson please read the question back to Mr. Eckert?

The Court: It simply was if you discussed with him about your going to school at Moscow.

The Witness: Yes, I did.

Q. When was that, Mr. Eckert?

A. Well, two to four years ago shortly after that Act was passed. I don't recall just when.

Q. Was this an agent of the Department of Justice you talked to?

A. I don't know what his title is. It seems to me he was an agent of a board or some commission that had been set up under this law that has been passed.

Q. What was the law, do you recall?

A. I am referring to a law, as I understand it, that required anyone who received training by a foreign government to register with a designated agent of the foreign government or of the United States Government.

Q. Where did you make this statement to this person, what city?

Mr. Vincent: The Government sees no materiality in this line of questioning.

Mr. Kelley: May I suggest a procedure that might get at this thing a little quicker, your Honor? This law provides that a statement—

The Court: I am familiar with the law, and I assume Mr. Witt is, and I do not see any remote connection at the moment, but I do not want to curtail any inquiry they may wish to make that may lead to something that may have some relevancy here. I do not see any connection, but I think he can answer.

[fol. 378] Mr. Kelley: All I want to do is suggest to Mr. Witt, he doesn't have to follow it if he doesn't want to, and it is merely to find out if at this time he gave a written statement, signed it or otherwise or whether he knows—

Mr. Witt: I do not want to ask him that way, your Honor, and I do not want any statement in the presence of the witness.

The Court: Mr. Eckert, you may answer where the conversation took place.

Mr. Crandall: Before we go into that I think the record will show that he is assuming that a statement was made. If it appears—

The Court: No, the Court isn't assuming that at all.

Mr. Witt: Does Mr. Vincent have an objection? You have no objection?

Mr. Vincent: I wasn't saying anything.

Mr. Witt: I thought you had an objection.

A. My recollection is it was held in Washington, D. C.

Q. How did this come about, did you go to visit in person in Washington, D.C.?

Mr. Kelley: That is immaterial.

The Court: Yes, I do not see any relevancy to that at all.

Q. Mr. Eckert, on that occasion did you give this person or agent of the Government any statement in writing?

A. My recollection is that I did not.

Q. Did you register under that law that you referred to?

Mr. Vincent: We object to that question.

Mr. Kelley: That is immaterial.

Mr. Witt: Well, your Honor, I will take it, if he did register under the law—

The Court: What difference would that make with re-
[fol. 379] spect to what we are inquiring about now?

Mr. Witt: I take it, if he did register under that law, his registration or statement, whatever it would be, would necessarily include references to his going to school in Moscow about which he testified on direct examination.

The Court: Well, do you claim that a registration or an act of Congress would amount to a statement within the meaning of 3500?

Mr. Witt: Not an act of Congress, your Honor, but, if this man did register under such a law and in his registration statement or the form or whatever it was he had reference to any matter he testified to on direct examination, I think we would be entitled to a copy of that.

The Court: You can answer whether you registered or not, Mr. Eckert. Did you register?

The Witness: Your Honor, my understanding is that I did not register under the Act.

Q. Now, Mr. Eckert—

Mr. Witt: I am going to try to ask a general question, your Honor, to shorten this.

Q. Aside from the occasions you have mentioned were there any other occasions on which you made a statement to any person of the Government or any agent of the Government excluding the kind of people and the class of people I have mentioned—

The Court: I think he has answered that question about three times.

Mr. Witt: Each time we get something else.

The Court: No, he has answered the question. You need not answer further on that question.

Mr. Witt: We object to it, and we think your Honor is preventing us from making the record we are entitled to make on this. May we have a moment, please?

[fol. 380] The Court: All right.

Mr. Witt: If the Court please, I am done with my examination about statements made by this man to agents of the Government other than the FBI and lawyers and attorneys of the Government, and we now move that your Honor make an order requiring the Government to produce any documents which statements are defined in Section 3500 in the possession of the agents and agencies of the Government to which the witness has now referred.

Mr. Vincent: May I say the defense has not established in my mind yet that this witness has made a statement as defined in Section 3500 or that any subject matter of these discussions related to his direct testimony.

The Court: I agree with you entirely. I think there is nothing whatsoever in the showing made here that would indicate that this witness had ever made any statement to any agent of the Government within the contemplation of 3500 other than the statements the Government has already produced which the Government states are the only matter that would come within the provisions of the statute, and I think there is no indication that this witness has ever made any to the Government other than the FBI or the reports that have been produced here, any statement within the category of 3500, and, therefore, the motion will be denied.

Mr. Witt: Just to complete the record on this, your Honor, in the motion I did refer to "statement" as defined in Section 3500. Of course, in view of this witness's answers; particularly his answers that he cannot remember, we have no way of knowing and no way of dragging it out of this witness. So, in our motion we are calling on the Government, we are asking your Honor to require the Government to produce for us any documents which are statements as defined in Section 3500, and specifically in view of the witness's answers we are referring to any statements as defined in Section 3500 which the witness may have made to Mr. Connors or any other person representing the McCarran Subcommittee, to the Immigration and Naturalization Service or any agent thereof, and any statement as defined in Section 3500 or the registration, if any, which the witness referred to in connection with the law requiring registration of persons who have received training in espionage and sabotage.

[fol. 381] The Court: The motion will be denied.

Mr. Witt: May we have a recess now, and then I am going to another subject?

The Court: What do you mean by that?

Mr. Witt: By the other subject?

The Court: Well, yes.

Mr. Witt: Yes, in Chambers, the next subdivision I am going to interrogate him about which relates to his statements if any to Government attorneys.

After Recess

Mr. Kelley: May it please the Court, may I make one statement? It now appears that the Government will use a witness by the name of Fred Gardner, a person from Montana. I am merely mentioning it so that the defense will have as much notice of it as it was possible for us to give them.

The Court: All right.

Mr. Witt: Well, your Honor, what about the problem of voir dire and whether any person on the Jury knows Fred Gardner?

Mr. Kelley: Well, when Mr. Gardner arrives we will submit to him the Jury list and ask him if he knows any of them, and also we can state to the Court that at least at this time, and I will amplify it later when I have more information, but I will state to the Court that it is my best knowledge at this time that Mr. Gardner has never lived in this community.

Mr. Witt: But it is also within my knowledge, if the Court please, that Mr. Gardner has been in this community on a good many occasions, so, there is some possibility.

The Court: Well, I think you have advised them that you expect to call him, and you can ask him if he is acquainted with any of the Jury. I do not know of anything that can be done at this time about the matter. We can wait and see what he says. I am wondering about one thing: Is [fol. 382] there any objection to my notifying the Bailiff to let the Jury go until 1:30, because we won't make any progress until noon?

Mr. Witt: I have no objection.

Mr. Kelley: We have no objection.

The Court: You might get the Bailiff and ask him to come in here.

Mr. Kelley: I have no objection if Mr. Witt feels that the making of this record will take until noon.

The Court: It is after 11:00 o'clock, and we would just be going in there for about 15 minutes I assume. I think we might as well let them go.

Mr. Kelley: We might start at 1:00 o'clock.

The Court: That might be an idea.

(The Bailiff entered the Court's Chambers.)

The Court: It is obvious we are not going to get through here in time available before noon, so, I think you can tell the Jury—everyone is agreed on it—that they be excused now but to be back at 1:00 o'clock, and you can explain to them—I think it is proper, and I think there will be no objection—that we have been here in conference about matters this morning and that we won't get through in time to have much court before noon, and rather than having them wait around we will let them go to come back at 1:00 o'clock. Is that agreeable to everyone?

Mr. Kelley: That is agreeable to the Government.

Mr. Witt: It is agreeable to the defense.

(The Bailiff left the Court's Chambers.)

Mr. Witt: Your Honor, there is one matter relating to the witness's testimony on cross examination yesterday that I think I have to clear up before I go into this line, and that relates to his answer on cross examination yesterday as to [fol. 383] whether or not he testified before the Grand Jury in this Court which handed down the indictment in the so-called Pezzati case which is now pending before your Honor on the motion to dismiss. The witness testified yesterday afternoon, as I recall, that although he testified before the Grand Jury which indicted Travis, and he said he thought that was either 1954 or 1955, he didn't recall testifying before a subsequent Grand Jury. Now, I have the witness's testimony here before the SACB on March 29, 1957, where I cross-examined him about this matter. We could not find this reference—

The Court: I might ask him again, if you have any doubt about it, if he testified before any subsequent Grand Jury here.

Q. I will ask you, Mr. Eckert, did you testify a second time in this Court before a Grand Jury after you testified in the Travis matter?

A. Yes, I subsequently recall that I have been here before the Grand Jury.

Q. And when was that, Mr. Eckert?

A. That was either 1956 or 1957 to the best of my recollection.

Mr. Witt: This one matter, since the witness's testimony yesterday was before the Jury, we will return to it when we go before the Jury to get the record straight before the Jury.

The Court: All right.

Q. Now, Mr. Eckert, before you testified against Jencks in El Paso did you talk to any prosecutor or attorney representing the Government about the testimony you would give?

Mr. Kelley: The Government objects to that as being immaterial.

The Court: I think I will let him answer the question. I think I stated the other day and I will state again that I do not believe that an interview by a United States Attorney on the eve of trial of a case in preparation for the trial in the course of which he may even make notes for his own guidance in examining a witness, that anything in that category comes within the provisions of 3500, but so that they may make the record I think I will let him answer the question.

[fol. 384] Mr. Deikman: I think it is about time that we cleared up the matter on what the courts have held in regard to this particular thing.

The Court: Let's hear what the facts are, and I will hear you about what the law is. I will let him answer that question.

A. Yes, I did.

Q. Did you talk to one attorney in El Paso or more than one?

A. In El Paso I talked to more than one attorney.

Q. Do you remember their names?

A. Well, the one attorney was Mr. Alderman.

Q. Joseph Alderman?

A. Yes. The other attorney was the attorney from Austin, it was Herring or something like that.

Q. Charles Herring, the United States Attorney?

A. Yes. I talked to the United States Attorney in El Paso.

Q. Holvey Williams?

A. Yes, Mr. Williams.

Q. Did you talk to the other Assistant United States Attorney in El Paso, Francis C. Broaddus?

A. Yes, I talked to him.

Q. And in those talks did you tell the lawyers what you knew about Jencks as a Communist?

Mr. Kelley: Objected to as immaterial and irrelevant. If he made a written statement or signed—

The Court: Assuming, and I expect it can be admitted that previous to the trial he discussed with the attorney who was going to conduct his examination the subject of his testimony, I expect there is no secret about that.

Mr. Kelley: No, I would think everybody would assume that, your Honor, but unless he made a written statement and signed it or otherwise adopted and approved it or knew some kind of a stenographic or other recording, transcription was made substantially verbatim, we would not be interested in it at all. I do not see why any preliminary questions are necessary.

The Court: I am trying to save time. I would assume the import of the testimony is that he discussed the case with the attorneys who were going to conduct the trial immediately prior to the trial and went over the testimony he [fol. 385] intended to give at the trial with them. I think that would be my inference from what he said.

Mr. Witt: That's right.

Mr. Vincent: That was in a different case. That is in the Jencks case. That is not concerned with this trial.

The Court: I know it is in the Jencks case. So, you may proceed with your examination.

Mr. Witt: All right. I am not sure there is a question pending.

Q. Will you answer the question?

A. I talked with some of those attorneys about the case.

Q. And when you talked to them did you tell them that you would be able to testify that Jencks attended the meeting at Henry Horowitz's?

The Court: I do not think—proceed and complete your question.

Q. —at Henry Horowitz's in 1947 prior to the St. Paul convention of Mine-Mill?

A. I don't recall what it, what I told the attorneys in the pretrial discussions.

Q. Did you tell them about being in the Communist Party meetings with Jencks in St. Paul while the Mine-Mill convention was going on in 1947?

A. I don't recall the questions and answers that they propounded to me.

The Court: I do not think you need to pursue that any further, Mr. Witt. You can ask him if he gave them any signed statement.

Mr. Witt: That is my next question, your Honor.

The Court: All right.

Q. Mr. Eckert, did you give any attorneys a statement that you had prepared, signed or unsigned?

A. None other than I may have given them the transcript of the CIO trial.

Q. While you were talking to any of those prosecutors was there a stenographer present?

A. No.

[fol. 386] Q. While you were talking to any of those prosecutors did they make notes?

A. I believe that some of them did.

Q. Which ones made notes?

A. Well, on at least one occasion I think Mr. Alderman made notes.

Q. Do you remember any other occasions on which Mr. Alderman or any of the other three prosecutors made notes?

A. I don't recall notes having been taken by any other than Mr. Alderman.

Q. Mr. Eckert, other than the CIO statement did you give any of those prosecutors in El Paso anything in writing even though not prepared by yourself?

Mr. Crandall: That is broad, anything in writing.

The Court: I think I will let him answer the question.

A. Mr. Witt, as far as I understand that question that would include a newspaper or anything else?

Q. Anything, Mr. Eckert.

A. I may have given it to them. I don't recall that.

Q. Did you give them anything in writing relating to Jencks?

A. I may have provided some of the Government attorneys with the minutes of the International Executive Board of Mine, Mill & Smelter Workers.

Q. You say you may have, but do I take it from that that you are not sure in your recollection whether you did?

A. No, I am not sure.

Q. Then, would you have any recollection as to what meetings of the International Executive Board of Mine-Mill you may have given them minutes for?

Mr. Vincent: If your Honor please, on the face of it—

The Court: I will sustain that objection. If he did, I assume they are not statements of this witness but are minutes of some other meeting, and to come within the rule they would have to be some statements by him that he subscribed to or approved or something in the language of the statute, and I mean handing him the minutes of a board meeting I do not think would bring the minutes within the purview of the statute.

Mr. Witt: We respectfully differ with your Honor on that. As we read Section 3500—I thought Mr. Kelley agreed with that before—if this man turned over the minutes of a [fol. 387] particular board meeting of Mine-Mill to one of the prosecutors and said, "Here, this is what I know about, I attended this meeting, and I can testify to what took place at that board meeting or some particular incident," as we read Section 3500, that is a statement of this witness.

The Court: The witness hasn't said anything like you state.

Mr. Witt: I cannot put it all in one question.

The Court: The minutes of the meeting may have been entirely opposed to something or some position he took and might have contained the statements of some other individual that absolutely opposed his views, and to say that the simple fact he produced them would bring them under the statute I do not think is right.

Mr. Witt: I cannot put it all in one question. I will try to if your Honor prefers. This is preliminary.

Mr. Kelley: You were just misstating the record up to this time. It wasn't a question of getting it all into one question.

The Court: What was the question?

(The reporter read the last question.)

The Court: You can answer that.

Mr. Vincent: If I might interject here, I think we are under a misunderstanding from what Mr. Witt said about a written statement. The definition in the statute is a written statement made by said witness and signed or otherwise adopted or approved.

The Court: That is what I thought. The only possible conception that any part of the minutes would be admissible, would come within the category would be if the minutes would show a statement made by the witness and he said, "This is what I said and this is still my view on the thing," it might possibly come within the statute, but, otherwise, it would not apply to minutes or anything else. [fol. 388] But he can answer that question if he can recall which was about what meetings or what meetings the minutes are of.

A. I may have supplied the Government's attorneys with a bound volume containing the minutes of the International Executive Board for a period from beginning sometime in 1945 or 1946 until sometime in 1948. I may also have given them the Casting Division Council minutes covering the same periods.

Q. When you may have given the prosecutors that material, Mr. Eckert, did you point out anything specific in that material you could testify about?

A. I don't recall whether, I don't recall whether I gave it to them or not, so, I cannot recall whether I pointed anything out.

Q. After you may have given them this material, Mr. Eckert, did they ask you any questions about any of the material which you may have given them?

A. I don't recall whether I did or not.

Mr. Kelley: That is immaterial.

The Court: He has answered the question.

Q. Mr. Eckert, after you talked to any of the attorneys did they or any of them come back with a document in writing which they showed you?

A. Can I have that question repeated, your Honor?

The Court: All right.

(The reporter read the last question.)

A. No.

Q. Did any of them come back with any recording of transcription of your interviews with them relating to Jencks?

A. No.

Q. After you talked to any of them did they ask you to sign any statement which they prepared or had prepared?

A. No.

Q. Now, Mr. Eckert, I will ask you about the occasion on which you testified against Gold before the Grand Jury in Washington, D. C. My first question is whether you talked to any of the attorneys representing the Government either in Washington or elsewhere before you went before that Grand Jury about the meeting early in 1948 in New York attended by you, Travis, Gold, and others about which you testified in the course of your direct examination on this trial.

[fol. 389] A. I don't recall which meeting you are referring to that I testified to here on direct examination.

Q. Well, Mr. Eckert, I am referring to the meeting you testified to on direct examination here held in New York City early in 1948 that I think you said was at a trade union center about which you also testified later in open court, and I say later, after you testified before the Grand Jury in Gold, about which you also testified in open court on the trial of Ben Gold. Do you know the meeting now?

A. Yes.

Q. All right, sir, then answer my earlier question as to whether you discussed that meeting with the Government attorneys before you testified against Gold before the Grand Jury in Washington, D.C.?

A. My recollection is that I did.

Q. And where was that?

A. I am not sure.

Q. What city?

A. Some in Washington. I think there was a meeting in Detroit. I am not sure about that.

Q. You say some in Washington?

A. Yes.

Q. Then you talked to an attorney or attorneys representing the Government on more than one occasion about that matter in Washington, D. C., before you testified before the Grand Jury?

A. Yes.

Q. Do you remember the names of the attorney or attorneys?

A. The attorney I recall was Mr. Lowther.

Q. Joseph Lowther who was the prosecutor on the trial later?

A. Yes.

Q. He was the only attorney you talked to representing the Department of Justice about that matter?

A. I don't recall whether he was or not.

Q. Did you give Mr. Lowther any document in writing whether prepared or signed by yourself or any other document?

A. My recollection is that I did.

Q. I take it you gave him a copy of your statement before the CIO?

A. I think that was included.

Q. Anything else in writing that you gave Mr. Lowther dealing with that meeting in New York?

The Court: By statement you mean the testimony of the CIO hearing, is that what you meant?

The Witness: Yes.

The Court: All right.

[fol. 390] Mr. Witt: I am referring to statement rather than testimony, your Honor, because it is an unofficial proceeding.

Q. Do you remember the pending question, Mr. Eckert?

A. Yes. I don't recall whether any other material was given him that referred to that particular meeting.

Q. When you talked to Mr. Lowther, I am actually talking about the times you saw Mr. Lowther about this matter, prior to your testifying before the Grand Jury, did you tell him that you attended that meeting in New York?

A. Your last question has got me confused in regard to whether the previous question was before the Grand Jury or before the trial.

Q. I am sorry. I will begin again. In this whole series of questions, until I make it clear I am asking you about something else, I am referring to your conversations with Mr. Lowther prior to your appearing before the Grand Jury.

A. Well, I didn't understand it that way. I understood before the trial.

Mr. Witt: Well, I am sorry, your Honor.

Mr. Kelley: Would it be correct that your answers apply to the period between the time the Grand Jury returned the indictment and the time of trial?

The Witness: Some may. I don't recall all the questions.

Mr. Witt: I had better try to start over again. May I make a general statement to save time so the witness will understand?

Mr. Vincent: How is it material? He has testified that he has spoken to one attorney at least.

Mr. Kelley: It is to Mr. Witt.

Mr. Witt: It is to us.

Q. Mr. Eckert, in the series of questions I am about to ask you, Mr. Eckert, I am referring to conversations with Mr. Lowther or any other Government attorney prior to your appearance before the Grand Jury against Gold in Washington, D.C. Now, I will ask you, to begin with, whether you had any discussion with Mr. Lowther or any other Government attorney about this meeting in New York [fol. 391] in 1948 prior to your testifying before the Grand Jury.

A. I don't recall whether I had a conversation pertaining to that particular meeting with Mr. Lowther prior to the Grand Jury.

Q. Do you recall having some conversation with Mr. Lowther about Ben Gold prior to a hearing before the Grand Jury?

A. Yes.

Q. But you don't recall whether in that conversation you told Mr. Lowther about the fact that Gold was present with you and others at this meeting in New York in 1948?

A. My recollection is that there were no meetings referred to. It was a request to appear before the Grand Jury.

Q. Now—strike that. Did you see Mr. Lowther only on one occasion or on more than one occasion prior to testifying before the Grand Jury?

A. I didn't state that I saw Mr. Lowther. This was a telephone conversation as I recall.

Q. I see. I am sorry. Then you mean you never talked to Mr. Lowther face to face before you testified before the Grand Jury?

A. After I got to Washington immediately preceding the Grand Jury proceedings I did, yes.

Q. But before that he talked to you on the phone?

A. That is my recollection.

Q. Where were you at the time?

A. At that time I am referring to I was in Pittsburgh.

Q. And where was Mr. Lowther, do you know, in Washington?

A. I believe that Mr. Lowther was in Washington.

Q. In the course of that telephone conversation did Mr. Lowther ask you any questions about your attendance with Ben Gold at this meeting in New York early in 1948?

A. I don't recall him asking me that at that time.

Q. Was it Mr. Lowther who called you, or did you call Mr. Lowther?

A. No, Mr. Lowther called me.

Q. And at the ineception of that conversation or at any time duging the course of that conversation did Mr. Lowther advise you that he was making a mechanical recording of that telephone conversation?

A. No, he did not.

Q. Was there only one telephone conversation before you testified before the Grand Jury that you had with Mr. Lowther or was there more than one?

A. One is all that I can recall.

Q. Then, I think you were beginning to say you saw Mr. Lowther face to face when you got to Washington and [fol. 392] talked to him prior to your appearance before the Grand Jury, is that right?

A. Yes.

Q. Did you talk to any other prosecutor?

A. I don't recall having talked to any others unless there was someone else in the room. I don't recall.

Q. Did you talk to Mr. Lowther only once prior to your appearance before the Grand Jury or more than once?

A. Well, in reference to the meeting?

Q. Yes.

A. To the best of my recollection it was just once.

Q. Then, you talked to him only once about this New York meeting in 1948, is that right?

A. To the best of my recollection that's right, prior to the Grand Jury.

Q. We are still talking, until I tell you otherwise, Mr. Eckert, to save time, we are talking about occasions prior to your attendance before the Grand Jury. In that talk with Mr. Lowther did you give him such names as you could then remember of the persons who attended that 1948 meeting in New York?

A. My recollection is that I did not.

Q. You told him, of course, that Ben Gold was there?

The Court: I do not know that you need to answer that question. The question is here about whether he made any statement in that respect, and what the contents were at the moment on the general subject—

Mr. Witt: This has to do with the subject matter of his direct testimony.

The Court: You are not interrogating him about the subject of his testimony. What we are trying to find out is if there is anything that you are entitled to have produced under this rule whatever the contents of it.

Q. Mr. Eckert, do you recall what you did tell Mr. Lowther about this meeting in New York in early 1948?

The Court: You need not answer that question either.

Mr. Witt: Well, your Honor, I am trying to get within the definition of the law.

The Court: You can ask him if he made any statement or I mean signed statement given him like you have with [fol. 393] these other witnesses with respect to the subject of the matter. You are entitled to it under your theory if it comes within 3500 whatever it contains, and the subject he has said he talked about this general subject, but the details of it I do not see where that is relevant at all.

Q. Mr. Eckert, when you talked to Mr. Lowther, this is still prior to your testifying before the Grand Jury, did you give Mr. Lowther anything in writing?

A. I may have given Mr. Lowther these, some of these minutes, documents.

Q. What are you referring to when you say some of these minutes, documents?

A. I am referring to the aforementioned minutes of the International Executive Board, the Die Casting Division. By documents I mean certain Marxian books, textbooks from the Lenin School, other material which was in my possession which I supplied in some of these cases. I don't recall if this was one of them or not.

Q. Well, with respect to those Marxist books you testified on the trial of Ben Gold as an expert, didn't you?

A. Yes.

Mr. Vincent: If your Honor please, that has no relevancy in this proceeding.

Mr. Witt: I want to clear the decks, your Honor, and clear the record on this.

Mr. Kelley: Clear what record, the Gold record?

Mr. Witt: No. In view of his answers I have got to get to my record, Mr. Kelley.

The Court: I do not see where it has any pertinency, but the answer has been made, and proceed, Mr. Witt.

Q. Did you give Mr. Lowther anything in writing relating to the meeting in New York early in 1948?

A. I don't recall having given him anything in writing relating to that meeting other than this CIO statement.

Q. Aside from any written material did Mr. Lowther ask you questions?

A. Yes.

Q. And you answered his questions?

A. Yes.

Q. Did Mr. Lowther have a stenographer present?

A. No.

[fol. 394] Q. Did Mr. Lowther ever show you later after you talked to him a statement based on the answers you had given to his questions?

A. No, he did not.

Q. Did you after the talk with Mr. Lowther sign any statement?

A. No, I did not.

Mr. Witt: Well, your Honor, so that we won't misunderstand each other, I am not going into his testimony before this Grand Jury or any other Grand Juries, because that is a matter we will deal with later.

Q. Now, Mr. Eckert, there came a time when you finally testified in open court against Ben Gold, isn't that right?

A. Yes.

Q. Now, these questions I will ask you from now on relate to the period between your appearance before the Grand Jury and the time you testified in open court against Ben Gold so we will understand each other. During that period did you talk to Mr. Lowther or any other Government attorney or prosecutor about the Ben Gold case?

A. Yes, I did.

Q. Any attorneys in addition to Mr. Lowther?

A. I don't recall any other attorneys.

Q. How many times did you talk to Mr. Lowther during that period?

Mr. Kelley: We will object to that as being immaterial to this inquiry.

The Court: He may answer.

A. Well, I recall several occasions.

Q. What do you mean by several, two or three or seven or eight?

A. I meant two or three.

Q. And in what city or cities did they take place?

A. Well, my recollection is one took place in Detroit, and the remaining in Washington.

Q. On any of those occasions I am asking about here, on any of those occasions when you talked to Mr. Lowther,

and I am still talking about the period between the Grand Jury and the trial, Mr. Eckert, did you give Mr. Lowther anything in writing?

A. None other than matters I previously testified to I may have given him before the Grand Jury. It may have been given to them at this time or it may not have been given to them at all. I don't recall.

[fol. 395] Q. Aside from those other documents you referred to in connection with your answers about your contracts with them prior to your appearance before the Grand Jury there are no other documents you can think of that you gave him in this later period between the Grand Jury and the trial?

A. I don't recall any other documents.

Q. Specifically, do you recall giving him any statement that you, yourself, had prepared and which was either signed by you or unsigned?

A. I don't recall other than there may have been letters in correspondence that I may have turned over to him covering a period that I was in the Mine, Mill & Smelter Workers.

Q. Other than that you don't recall anything else?

A. Other than that I recall nothing else.

Q. After those talks with Mr. Lowther, I am still talking about that same period between the Grand Jury and the trial—strike that. I am sorry, Miss Marson. On those occasions when you talked to Mr. Lowther during that period on any of them was there a stenographer present?

A. There was not.

Q. Was there any mechanical recording device used on any of those occasions by Mr. Lowther?

A. If there was, he didn't tell me about it. I didn't know about it.

Q. After you talked to Mr. Lowther on those accasions did he show you a statement which he asked you to look at?

A. No, he did not.

Q. After those occasions in which you saw Mr. Lowther did you sign anything for him prepared by yourself, by him or anybody else?

A. No, I did not.

Q. All right, Mr. Eckert, you testified yesterday afternoon that you appeared as a witness in the so-called decompliance proceeding before the NLRB. In connection with that I will ask you whether before you took the witness stand in that proceeding you talked to any attorney or any attorneys representing the NLRB.

A. Yes, I did.

Q. One attorney or more than one?

A. I can only recall one.

Q. Do you recall his name?

A. No, I do not.

Q. Was his name Foley?

A. Mr. Foley, that's right.

Q. How many times did you talk to Mr. Foley before you took the witness stand in that proceeding?

A. Several times.

Q. What does "several" mean?

A. One, two or three times or thereabouts. I am not sure.

Q. In what cities, Mr. Eckert?

A. I recall having talked to him in Washington, D. C., [fol. 396] prior to the hearing. I don't recall whether I talked to him in any other city or not.

Q. On any of those occasions when you talked to Mr. Foley about the testimony you would give in that proceeding did you give him anything in writing?

A. None other than the type of material that I have said that I may have supplied in these other proceedings you asked me about.

Q. Tell us more specifically what you mean by the type of material that you referred to, different kinds of material, Mr. Eckert?

A. My recollection is that I did give him the copy of the CIO reports, I may have given him the minutes of the Executive Board and Die Casting Division, I may have given him some of the correspondence in Mine, Mill & Smelter Workers prior to my leaving the Mine, Mill & Smelter Workers, I may have given him some of these books I previously referred to.

Q. So-called Marxist-Lenin classics, Mr. Eckert?

A. Yes, that is the general description.

Q. You testified in that proceeding as an expert, is that right?

A. Yes, I did.

Q. Is there anything else you recall giving Mr. Foley?

A. No, I don't recall anything else.

Q. Did you give Mr. Foley any statement you, yourself, had prepared which was either signed or unsigned by you?

A. None other than any letter that may have been included in that correspondence I referred to.

Q. Was a stenographer present on any of these occasions when you talked to Mr. Foley?

A. No, there was not.

Q. To your knowledge did Mr. Foley use any mechanical recording device or machine?

A. To my knowledge he did not.

Q. Did Mr. Foley make notes during the course of the conversations with you?

A. Yes, he did.

Q. Did Mr. Foley to your knowledge later have those notes written up?

A. Notes written up?

Q. Well, did he have them typewritten later?

A. No, not that I know of.

Q. Yes, to your knowledge. After those conversations with Mr. Foley did he show you anything in writing which he had prepared or which he had had prepared?

A. Well, nothing else other than possibly Government exhibits or something.

Q. Do you remember what those were?

A. No, I don't.

Q. Did you sign anything for Mr. Foley after those conversations?

A. No, I did not.

Q. Now, Mr. Eckert, you testified yesterday that you appeared before a Grand Jury in this court against Travis [fol. 397] in 1954 or 1955. Is that actually your best recollection as to the time, Mr. Eckert?

A. Yes, it is.

Q. Before you appeared before the Grand Jury on that occasion—

The Court: Mr. Witt, I hesitate to interrupt when you are trying to make a record, but it seems to me you could shorten it very much, for instance, here you have got this thing in Colorado, by asking him before the Grand Jury proceedings or before the trial he talked to any attorney rather than taking it in two or three separate installments and then developing what transpired.

Mr. Witt: Well, the problem here is we are talking about four separate episodes with respect to Travis, two appearances before Grand Juries—

The Court: If you ask him if in any of these appearances he talked to any attorney.

Mr. Witt: I will try it, your Honor. Just to get the record straight at this point, the witness has now testified that he appeared before both Grand Juries.

The Court: Yes.

Mr. Witt: Of course, we know he has testified in both trials.

Q. So, Mr. Eckert, as the Court suggested, I am going to ask you general questions about these four occasions. If you have any difficulty following, let us know. Did you talk to any attorney or prosecutor representing the Government before any of these four occasions?

A. Yes, I did.

Q. On every one of the four occasions?

A. Yes.

Mr. Witt: I am afraid we have to go back to the individual ones again.

The Court: That is all right.

Mr. Witt: I wanted to make sure I understood what you said.

[fol. 398] The Court: Ask him who he talked to and ask him when.

Q. I will ask you first your talks prior to your appearance before the Grand Jury the first time, Mr. Eckert. Whom did you talk to?

A. I don't recall who the attorney was at that time.

Q. Was it Mr. Kelley?

A. I don't know whether Mr. Kelley was in it at that time or not. A later time, yes, but I don't recall whether

it was Mr. Kelley I talked to prior to the Grand Jury hearing or not.

Q. Was there only one attorney or more than one?

A. I don't recall which attorneys handled the Grand Jury case on Travis.

Q. Do you recall where it was you talked to the attorney or attorneys, in what city?

A. Well, at least some of the occasions I talked to them here in Denver.

Q. How many occasions in Denver?

A. Well, one or two occasions, possibly more, before the Grand Jury.

Q. Did you talk to the attorney or attorneys in any other city besides Denver prior to your first Grand Jury appearance in this court?

A. I don't recall whether I did prior to that hearing or not.

[fol. 399] Afternoon Session 1:00 p.m.

The Court: You may proceed, Mr. Witt.

KENNETH ECKERT, resumed the stand, and testified as follows:

Cross examination.

By Mr. Witt (continued):

Q. Mr. Eckert, I asked you yesterday afternoon whether you testified before a Grand Jury in this Court a second time. That was after you testified that you had appeared before a Grand Jury against Travis in 1954 and 1955, and I think you said yesterday that you did not recall whether you appeared before a Grand Jury in this court a second time. Based on the discussion in Chambers in which you participated this morning, Mr. Eckert, I want to ask you whether you now recall whether or not you appeared before a Grand Jury in this court a second time.

A. Yes, I do.

Q. And did you?

A. Yes.

Q. Mr. Eckert, on your direct testimony last week you

testified about attending a meeting in Travis's home in Chicago in 1948, and in connection with that I will ask you whether you recall that you were asked the following questions and gave the following answers, page 182: "Question: Now, Mr. Eckert, I would like to ask you whether or not following this meeting you attended a meeting at the home of Mr. Travis. Answer: Yes, I did. Question: And where did Mr. Travis live at that time? Answer: In Chicago. Question: And how long after the New York meeting if you recall was this meeting in Travis's home? Answer: It was shortly after, I don't recall exactly, as near as I can recall a week, possibly two weeks." Do you recall those questions and answers last week, Mr. Eckert?

A. Yes.

Q. Now, I will ask you to look at the transcript of your testimony last week at page 183 and ask you to read to yourself the following question and answer and let me know when you have done that, and then I will ask you a question about that.

A. I have read it.

Q. All right. Now, having read it, Mr. Eckert, do you recall testifying last week that Mr. Harold Sanderson attended that meeting at Travis's home in Chicago in 1948?

A. Yes, I believe I just read that in the transcript.

Q. Mr. Eckert, I will now hand you the transcript of your [fol. 400] testimony before the SACB in Washington on March 27, 1957, and ask you to read to yourself the questions and answers about that meeting in Travis's home in Chicago in 1948, and when you have finished reading it to yourself I will ask you a question about that testimony. I suggest, Mr. Eckert, you begin with the second question on page 1023.

Mr. Witt: Is that appropriate, Mr. Kelley?

Mr. Kelley: Yes. I just had one question about it that I would think we can approach the Bench on.

(Conference at the Bench.)

In Open Court

Q. Do you remember my suggestion, Mr. Eckert?

A. Yes.

Q. You begin with the second question on page 1023 and read through your answer to the question as to whether you recall who was present at the meeting. Read it to yourself, Mr. Eckert, first.

A. I have finished reading it, Mr. Witt.

Q. Mr. Eckert, it is true, isn't it, that when you testified on that occasion before the SACB as to who was present after you named four people by name you added, "These are the people I can remember." That is true, isn't it?

A. Yes.

Q. I will ask you whether Harold Sanderson was one of the four people whose names you gave as being present at that meeting when you testified before the SACB.

A. Apparently from the record he was not one of those I named as being present.

Q. Mr. Eckert, I will now hand you the transcript of your testimony on the first trial against this defendant, this being the transcript of testimony you gave on December 1, 1955, and I will ask you to read to yourself again your testimony about the same meeting at Travis's beginning with the second question from the bottom on page 267 and reading as far as you need to on page 268 so you will refresh your recollection as to who you named as being present at that meeting when you gave that testimony.

A. How far shall I read, Mr. Witt?

Q. Until—I thought I suggested to you, Mr. Eckert, maybe I didn't make myself clear, until you are satisfied you are finished reading the testimony you gave as to who was present at that meeting.

A. Well, I think I read far enough for that.

Q. Then, if there is any question, Mr. Eckert, satisfy [fol. 401] yourself before I ask you my question.

A. I don't know what follows in the transcript, Mr. Witt.

Mr. Witt: Then, if the prosecution, if there is any problem, can take care of it on the redirect if the witness has any doubt.

Q. I will ask you having read the testimony you gave on the first trial, again, of the defendant whether Harold Sanderson was one of the names you gave as being one of those present at that meeting in Travis's house in Chicago in 1948.

Mr. Kelley: Before he answers, may I ask, does that question include on direct examination only?

Mr. Witt: Only on direct is the only matter I have asked him to read, your Honor, and ladies and gentlemen.

A. As far as I can read in the record his name had not been mentioned to that point.

Q. Mr. Eckert, do you recall when you were testifying on direct examination last week Mr. Kelley asked you how your membership in the Communist Party was terminated?

A. I recall a question of that general nature, yes.

Q. And you recall your answer that your membership was terminated by expulsion?

A. Well, that is the way it was terminated, and to my recollection that is the way I answered it.

Q. Now, Mr. Eckert, I will ask you in connection with that testimony about your expulsion from the Communist Party, did you receive any written notification from the Communist Party that you had been expelled from the Party?

A. Yes, I read written documents that I had been expelled.

Q. What written documents did you read?

A. An article in the Communist Daily Worker and a leaflet issued by the Ohio State Communist Party to various Mine-Mill plants, the workers in those plants stating that I had been.

Q. And let me ask you my question again and perhaps make it a little clearer: Did you receive any personal notification by letter or telegram, any personal notification in writing from the Communist Party that you had been expelled?

A. I don't recall any such notification.

Q. Didn't you testify last week on that subject that you [fol. 402] read about your expulsion?

A. I read about it all right.

Q. And when you gave that answer last week you were referring to what you said a moment ago, you read about it in the Communist Daily Worker and in these weeklies that were distributed, is that right?

A. I read it in those documents, yes, possibly others too.

Mr. Witt: If the Court please, your Honor will recall that we objected to this question last week which now appears on page 243 about how his membership was terminated, and when he answered by expulsion, and the reason we did it, your Honor, was because a minute or two before, and this appears at page 242 from which I just read to the witness, he said he read about his expulsion, and the basis for our objection was that his answer that he was expelled that he gave at page 243 was based on hearsay as his early answer indicated. Now, in light of the witness's answers to me now on cross examination I beg leave to return to that issue and move now that the witness's answer on page 243 that his membership in the Party was terminated by expulsion be stricken and the Jury be instructed to disregard that answer.

The Court: The motion will be denied.

Q. Mr. Eckert, you remember last week more or less at the beginning of your cross examination by Mr. Kelley after he had asked you whether you had ever been a member of the Communist Party of the United States he asked you when you became a member, and you answered, "Well, sometime back about 1931 is as close as I can recall," do you remember that answer?

A. Yes.

Q. Mr. Eckert, do you recall making a statement to the FBI at any time about when you first joined the Communist Party?

A. I believe that I did make such a statement to the FBI.

Q. And when was that that you made such a statement?

A. I don't know.

Q. Was it in 1948?

Mr. Vincent: I object to that, the witness has answered that question.

Mr. Witt: I am trying to refresh his recollection.

The Court: I think I will sustain the objection. I think, if you have anything contradictory, you can ask him what-[fol. 403] ever the fact is. If your material would indicate, you can proceed on that basis.

Mr. Witt: All right. I am used to the other procedure, and I will overcome my ingrained habits.

The Court: I think the question is, did you not state the time and place was such and such a thing and let the witness answer.

Mr. Witt: I think we can make it even shorter.

Q. I will now show this witness the document which I have related to Mr. Kelley about being one of the documents your Honor gave to the defense after production by the prosecution.

Mr. Kelley: I want to object to the use of this document for the purposes of impeachment for the reason that this is a hearsay statement and not the statement of the witness.

The Court: No, I think we will get to that. I think he can ask him the question whether he made that statement, whatever it is, and then the witness can answer yes or no. If he denies he made the statement, then we will get to the point you are making.

Mr. Witt: I am astonished at this objection, your Honor, because this statement is the only one that this man has said that he made in his own handwriting and the photostated copy of which statement is in this man's own handwriting that Mr. Kelley delivered to us yesterday.

Mr. Kelley: I do not know whether it was in his own handwriting. I wasn't aware that this was the signed statement. Is this the one that was the signed statement?

Mr. Witt: This is the one, Mr. Kelley, and it is signed, the photostatic copy of the original.

The Court: I think you can proceed and ask him the question.

Mr. Kelley: I withdraw the objection.

The Court: I think the objection is withdrawn. Ask him [fol. 404] the question that you wish.

Mr. Witt: All right, I will then show him the photostatic copy of his own handwritten statement or at least a statement by him. I direct his attention to the beginning of the third paragraph on the first page.

The Court: I think you can ask him, Mr. Witt, ask him if he didn't make the statement.

Q. Mr. Eckert, I ask you to look at this and ask you whether you didn't make the following statement under date of—

Mr. Kelley: We do not have our copy of this. I wonder if we could have just a minute.

Mr. Witt: I can give you the typewritten copy or the photostatic copy of the handwritten original. Do you want this one or this one?

Mr. Kelley: I want to get our own.

Mr. Witt: This is the one we received from you. Do you doubt it, Mr. Kelley?

Mr. Kelley: No, I do not.

The Court: How long will it take?

Mr. Kelley: He can go ahead.

Mr. Witt: I do not want to be interrupted this way. I will wait for Mr. Kelley to get the statement.

The Court: We will wait until he gets the statement.

Mr. Kelley: May it please the Court, he can proceed. We will use the typewritten copy instead.

The Court: Then, you may proceed, Mr. Witt. I think you had better restate your question so that it will be clear. With this interruption the witness may not be clear.

Q. Mr. Eckert, in this statement in your handwriting or [fol. 405] somebody's handwriting dated May 22, 1951, did you not state or did you not at least sign that statement and agree to it, and this is the third paragraph on the first page of the photostatic copy of the handwritten statement, "While living in Toledo, Ohio, during the early part of 1932 I joined the Communist Party after having been active in the Union Employment Council"?

A. What do you want me to read, Mr. Witt?

Q. Just that sentence I just read to you, look at that, and see if that conforms to what I just read.

The Court: Well, the question is, I think to save a lot of confusion, simply to ask him if he did or did not make that statement at that time, and he will answer yes or no.

Q. Did you or did you not make that statement at that time, answer yes or no, Mr. Eckert?

A. I believe this is the statement I signed about that time.

Q. Mr. Eckert, I will now read you questions and answers in the course of your testimony on direct examination during the first trial against this defendant on November 30, 1955. This is from page 125: "Question: Mr. Eckert,

are you now or have you ever been a member of the Communist Party? Answer: Yes. Question: And when did you first become a member of the Communist Party? Answer: About 1931." Do you recall those questions and those answers?

A. I recall questions of that general nature. I do not recall what was said other than the transcript there.

Q. Now, still referring to your testimony on the first trial against this defendant, Mr. Eckert, but this time under cross examination in that trial, testimony you gave on December 5, 1955, this is at page 318, I will ask you whether you recall the following questions and answers: "Mr. Eckert, when according to your testimony in this case did you join the Communist Party? Answer: I joined the Communist Party to the best of my recollection in 1931 or possibly 1930. Question: Or possibly 1930? Answer: It is possible, yes." Do you remember those questions and answers?

A. I don't remember the testimony, Mr. Witt, but—

Q. I will ask you now, Mr. Eckert, to tell the ladies and gentlemen of this Jury according to your present best recollection whether you joined the Communist Party in 1930, whether you joined the Communist Party in 1931, or whether you joined the Communist Party in 1932.

A. To the best of my recollection I joined the Communist [fol. 406] Party about this period that has been referred to. I do not remember the exact year that I joined the Communist Party.

Q. Mr. Eckert, why did you tell the ladies and gentlemen of this Jury when Mr. Kelley asked you a question about that on your direct examination last week that you didn't remember quite what year it was?

Mr. Kelley: The Government objects to that as argumentative.

The Court: I will sustain the objection.

Q. Mr. Eckert, I will ask you whether you recall last week on direct examination giving the following answers to the following questions about the meeting in Chicago early in 1946 at which the so-called Steering Committee in Mine-Mill was organized, page 92, "Question: Will you

state what the Steering Committee was? Answer: The Steering Committee was a committee designated by the Communist Party to coordinate the work of the Communist Party inside the Mine, Mill & Smelter Workers. Question: Now, did you state about when the Committee was organized? Did I ask you that? Answer: Yes. Question: I missed the answer. Will you repeat it, please?" The Court then said: "He said in 1946. Answer: I said that was my best recollection, early in 1946." Then, with permission of the prosecution I will skip.

The Court: I think you interrogated him about that yesterday, didn't you?

Mr. Witt: Just on one aspect of it. This is another aspect of it. We will get to it another way. With the permission of the prosecution I will skip to the bottom of the page, because the intermediate material is irrelevant, and go to the last question at the bottom of page 92: "Question: Do you recall who was present at the time the Committee was set up? Answer: Well, some of the people present were John Williamson, Gil Green, Maurice Travis, Chase Powers, Al Skinner, Mr. Fred Fine, a Mr. Sanderson, Harold Sanderson were among those attending that meeting." Now, you remember those answers of yours to those questions particularly this last one about who you recall attended that meeting?

A. I remember giving that answer along that line.

Q. Now, Mr. Eckert, I will read you from your testimony on the first trial particularly with respect to the people you named as attending that same meeting beginning at the bottom of page 223: "Question: Now, was there a meeting [fol. 407] held by anyone at which either, well, at which you and the defendant Travis were present in connection with the organization of the Steering Committee? Answer: Yes. Question: And where did that take place? Answer: To the best of my recollection the formulization of the Steering Committee, its official creation took place in Chicago. Question: And that would have been what period of time? Answer: Well, sometime in the forepart of 1946. Question: Who was present at that meeting? Answer: Well, Maurice Travis, Chase Powers, Al Skinner, myself, Gilbert Green,

Fred Fine. There may have been other Communist Party members from the Mine-Mill office present. I don't recall." Do you recall those answers with respect to who was present and those you named?

A. No, Mr. Witt, I don't remember the people that I may have remembered at that particular time and stated who were there.

Q. I didn't ask you that, Mr. Eckert. I ask you whether you recall giving those answers on the first trial against this man Travis and particularly whether you remember naming those particular people I read to you.

A. No, I can't remember the questions and answers propounded here in these various trials including this one.

Q. Now, Mr. Eckert, John Williamson was a pretty important fellow in the Communist Party, wasn't he?

Mr. Vincent: The Government objects to that question, your Honor.

The Court: What is the objection?

Mr. Kelley: We will withdraw the objection, your Honor.

The Court: You may answer.

A. Well, he thought he was.

Q. Did you think he was when you were a fellow Communist with him?

A. No, I thought he was a dope.

Q. But you testified here on other occasions that he was the National Trade Union Secretary of the Communist Party, right?

A. Yes, but still a dope.

Mr. Witt: I move to strike that answer again and suggest that your Honor direct the witness to stop being silly.

[fol. 408] The Court: Well, I think I will strike that last part of the answer.

Q. I will ask you again—

Mr. Witt: I am sorry, your Honor.

The Court: He has answered your question, hasn't he?

Mr. Witt: Yes.

Q. And in your testimony against Travis on the first trial you had occasion to refer to John Williamson, didn't you?

Mr. Kelley: Well, that question is pretty vague.

The Court: I will sustain the objection to the form of the question.

Mr. Witt: I will withdraw that.

The Court: All right.

Q. Mr. Eckert, on the first trial against Travis you gave testimony about the meeting in New York early in 1948 attended by you and Travis and John Williamson and others which you testified about here last week, didn't you?

A. Yes.

Mr. Kelley: Excuse me, Mr. Witt, but, as I understand, this is deviating from the procedure that we agreed in Chambers would be followed, isn't it?

Mr. Witt: No, your Honor.

The Court: Proceed.

Mr. Witt: This is just confronting the witness, that is all. I am entitled to go ahead and draw any conclusions if it is competent otherwise.

The Court: He said he was at the meeting. What is the next question?

Mr. Witt: The point I am asking him, if I may, your [fol. 409] Honor, I am not sure that it came out clearly for the Jury.

Q. Mr. Eckert, you did mention Mr. Williamson's name in connection with that meeting in New York early in 1948 when you testified on the first trial against Travis, didn't you?

A. Well, Mr. Witt, I remember Mr. Williamson being there. I don't remember the questions and answers in these various proceedings.

Q. Mr. Eckert, I will read you the following question and answer from your testimony on the first trial and on direct examination on December 1, 1955, page 261 about who was present at that meeting in New York City in 1948: "Question: Now, will you tell us who else was present at this meeting, and when you do, if you would—it might save some time—if you would tell us who they were at the time. Answer: John Williamson, National Trade Union Secretary of the Communist Party; Eugene Dennis, General Secretary of the Communist Party of the United States," et

cetera and et cetera. You can look at the rest of the answer. I will ask you whether that refreshes your recollection when you testified about that meeting in New York during the course of your testimony on the first trial, whether that refreshes your recollection that John Williamson was the first name you mentioned among the people who attended that meeting?

A. That is the first name in the record here.

Q. Now, I will ask you whether you can explain for the ladies and gentlemen of the Jury why it is that even though you gave that testimony naming John Williamson on the first trial, why when you gave your testimony on the first trial about the organization of the Steering Committee you didn't tell that jury that Williamson was present and why it is that when you testified here last week on direct examination about the organization meeting of the Steering Committee you mentioned that John Williamson was present.

Mr. Kelley: The Government objects to that for the reason it is unintelligible, and, if anybody can figure it out, I think it is irrelevant and improper type of question.

The Court: I think it is argumentative at least. I do not quite understand—

Mr. Witt: I withdraw the question, your Honor.

The Court: All right.

[fol. 410] Q. Now, with respect to the same testimony about the organization of the Steering Committee which you gave last week you will recall from our reading of it a few minutes ago that in your direct testimony last week you testified that Harold Sanderson attended that meeting. Do you recall that?

A. I recall him attending.

Q. Do you recall just a few minutes ago when we read those names from your testimony last week you testified last week that Harold Sanderson attended?

A. I have trouble remembering your last question to say nothing of questions going back before the last one.

Q. How come, Mr. Eckert, you seemed to have so little difficulty last week?

Mr. Kelley: May it please the Court, the Government objects, he knows this question is improper.

The Court: Any comments you have to make, Mr. Witt, will be as argument to the Jury and not argument with the witness.

Mr. Witt: I withdraw the partial question I asked.

Q. I direct your attention again to page 92 of your transcript of testimony last week and ask you to look at it again at the very bottom of the page and go over to the next page, 93, and ask you if that doesn't refresh your recollection that last week you said that Harold Sanderson attended that meeting, that organization meeting of the Steering Committee.

Mr. Kelley: May it please the Court, this has already been gone into, the questions have been asked and answered on this.

Mr. Witt: Not on Sanderson. I did on Williamson, and I did yesterday on Powers, but I haven't done it yet on Sanderson. All we can do is take one name at a time of the scores of names this man has mentioned.

The Court: He can answer the question.

A. Sanderson was at the meeting.

Q. Answer my question, Mr. Eckert.

Mr. Witt: Your Honor, I move to strike that answer and ask you to direct the witness to answer the question which [fol. 411] is whether the reading of that transcript refreshes his recollection that he testified last week that Sanderson was at the meeting.

The Court: I think he has answered the ultimate fact. If you want to ask him when he testified on that occasion if he didn't mention Mr. Sanderson's name, if you wish to ask him that, do so.

Q. All right, I will ask you, Mr. Eckert, if you gave this answer last week as to who was present at that meeting of the Steering Committee which was organized in Chicago in 1946: "Well, some of the people present were John Williamson, Gil Green, Maurice Travis, Chase Powers, Al Skinner, Mr. Fred Fine, a Mr. Sanderson, Harold Sanderson were among those attending that meeting." Does that refresh your recollection that when you testified last week you said a Mr. Sanderson, Mr. Harold Sanderson was among those present at that meeting?

A. Mr. Witt—

The Court: I do not get the point to this. Where is the alleged contradiction?

Mr. Witt: The alleged contradiction, your Honor, if you followed the names he mentioned when he testified about this on the first trial, is that he did not mention Sanderson among those present on the first trial.

The Court: And he did on the second trial?

Mr. Witt: That's right.

The Court: Let it stand there then if that is the fact.

Mr. Witt: That is the fact as of this point. If it is not the fact, the prosecution has the normal right of redirect examination.

Q. I will still ask you the question, is your recollection now refreshed that when you testified about this meeting last week you said a Mr. Sanderson, Harold Sanderson was among those present?

A. I have no doubt hearing the transcript that I testified to that. If I was fresh in my memory, I don't even know what it means.

[fol. 412] Mr. Witt: May we approach the Bench on a matter independent of the examination which has just come to my attention in the Courtroom, your Honor?

(Conference at the Bench.)

In Open Court

Q. Mr. Eckert, do you recollect testifying last week on direct examination about a meeting that was held in Chicago, Illinois, in 1946, at a restaurant called the Russian Cooperative Restaurant?

A. Yes, I believe I testified about such a meeting.

Q. And do you recall that Mr. Kelley asked you the following question and you gave the following answer, page 136: "Question: Now, at this meeting will you state some of those who were present? First, let me ask you this question: About how many attended that meeting? Answer: To the best of my recollection there must have been, I think there was 75 or more, maybe slightly less, around that figure." Do you remember giving that answer to that question last week?

A. That sounds like it.

Q. Mr. Eckert, do you recall being asked questions about this meeting by Mr. Broome, counsel for the Attorney General when you testified before the SACB?

A. No, I don't remember whether Mr. Broome asked me that question or not.

Q. Mr. Eckert, I will read you the following question and answer with respect to that matter from the transcript of your testimony before the SACB on March 27, 1957, page 936: "Question: Let's take up the meeting at the Russian Cooperative Restaurant. Just how large a meeting was that, Mr. Eckert? Answer: Well, my estimate would be that there were 100 or somewhat more at that meeting." Having heard that do you recall that you gave that answer to that question in Washington last year?

A. I don't recall whether I gave it, but, if it is in the transcript, I must have given it.

Q. Can you explain for the benefit of the ladies and gentlemen on the Jury how it is that in 1957 your recollection was that there were 100 or more at a particular meeting and in 1958 the number shrinks to 75 or thereabouts or maybe less?

Mr. Kelley: The Government objects to that as argumentative.

The Court: I think I will let him answer although I do not think the question is in the terms of what the witness [fol. 413] answered. What was it he said about the 75?

Mr. Witt: I have it here in front of me. He said 75 or more, maybe slightly less, around that figure, and before the SACB he said 100 or somewhat more. Well, it doesn't matter. We do not have to waste time. I will withdraw the question if the Court permits me.

Mr Kelley: We have no objection to his withdrawing the question.

The Court: All right.

Mr. Witt: May we have this off the record for a moment, sir?

(Discussion off the record.)

Q. Now, Mr. Eckert, with respect to the same meeting, this what I will call, if you understand me, I think the ladies and gentlemen of the Jury will, what I will call the

Russian Cooperative Restaurant meeting I will read you the answers you gave to the following questions last week on direct examination as to the particular persons who attended that meeting, page 136: "Question: Will you tell me some of those who were present? Answer: The members of the Steering Committee, Maurice Travis, Chase Powers, Al Skinner, and myself, Harold Sanderson, Bernard Stern, Leon Gorelick, Irving Dichter, Alex Berlint, William Gately; these are some of the names that I can recall at the moment." Now, you remember mentioning those names in answer to the question last week?

A. Yes, I believe those are some of the names I mentioned.

Q. Some of the names you mentioned last week?

A. Some of the people that attended, that I mentioned last week.

Q. Mr. Eckert, I will read you your answer to the question as to the people who attended that same meeting at the Russian Cooperative Restaurant meeting, the answer you made when you testified against Travis on the first trial: "Question: Well, can you name some of the top ones who were the leaders at this meeting? Answer: Maurice Travis, Chase Powers, Al Skinner, Irving Dichter, Al Balint, myself, Harold Sanderson, Howard Lee, well, many others." Do you remember that answer to that question?

A. I remember a question and answer generally along that line.

[fol. 414] Q. Now, Mr. Eckert, I will read you from the same page of the SACB testimony of yours last March from which I read you before, page 936 after you estimated about how many attended the meeting, the bottom of page 936: "Can you give us the names of some of them, as many as you can recall at the present time, who attended?"

Mr. Witt: There is no doubt, your Honor, and ladies and gentlemen of the Jury, from the record this is the same meeting at the Russian Cooperative Restaurant. I don't think there is any dispute.

Q. "Answer: Well, starting with the members of the Steering Committee, they were all there, Harold Sanderson, Morris Wright, Irving Dichter, Alex Balint, Herman Clott,

James Pinta, a fellow by the name of Schnaittacher, a staff member from the West Coast. Jack Marcotti, Leon Gorelick, and many more whose names I don't recall." Do you remember mentioning those particular names before the SACB?

A. I don't remember mentioning them, but I remember their being there now refreshing my memory on it.

Q. Mr. Eckert, in connection with your testimony last week on direct examination in this trial you testified about a meeting of the Steering Committee at the Hollenden Hotel in Cleveland during the 1946 convention of Mine-Mill, and in connection with that you asked a question about a particular Steering Committee meeting held at that time in that place, page 140.

Mr. Witt: Well, I think to get a little continuity in this I had better begin at the bottom of page 139.

Q. "Question: Do you recall about when the convention was held in Cleveland? Answer: My recollection is the early fall of 1946. Question: At about the time the convention was held were there any Steering Committee meetings? Answer: Yes. Question: And do you recall any that occurred immediately prior to the convention? Answer: Yes. Question: Do you recall where this particular Steering Committee meeting was held? Answer: The first one that was held prior to and during the convention, my recollection is it was in the Hollenden Hotel in Cleveland. Question: Now, who was present at that meeting? Answer: John Williamson, Maurice Travis, Powers, Skinner, and myself. I think Harold Sanderson was there. There might have been a few others, but that is all I can recall." Do you remember those answers you gave to those questions last week particularly that last answer as to who was present? [fol. 415] A. I remember it in a general way. I don't know what you mean by "particularly that last part". Which part is that?

Q. I mean that last answer you gave where you named John Williamson and other people, whether you remember stating those names on this witness stand last week.

A. John Williamson and who else?

Q. I am sorry—

Mr. Kelley: "—Maurice Travis, Powers, Skinner, and myself. I think Harold Sanderson was there. There might have been a few others, but that is all I can recall."

A. They were all there.

Q. I didn't ask you that, Mr. Eckert. I asked you whether you recall that that is the testimony you gave last week about who was there.

A. I have no doubt that is the testimony. I don't recall whether I gave it or not.

Q. Mr. Eckert, I will now read you the following answers which you gave to the following questions when you testified about this meeting or a meeting, if there is a different meeting, at the Hollenden Hotel in Cleveland in 1946: "Question: Now, at about this time or during this period do you recall the conversation at which the defendant Travis was present and a man by the name of Williamson which occurred in Cleveland and the subject matter of which related to the source of direction of Communist policy in Mine-Mill? Answer: Yes. Question: When with reference to this last conversation or wherever else you may place it more specifically did this conversation occur? Answer: It was held in the Hollenden Hotel in Cleveland and immediately prior to the 1946 convention of the Mine, Mill & Smelter Workers. Question: Now, will you state those that were present at this conversation? Answer: John Williamson, Maurice Travis, myself, Al Skinner. I don't recall whether Chase Powers was present at this particular conversation or not. He was at the others." Now, do you remember—

The Court: The first question was, who was present in the meeting. Now, you are asking who was present at a conversation. That would not necessarily be contradictory. There may have been a meeting, and the question you are just reading has to do with a conversation, not the meeting.

Mr. Witt: No, your Honor. That is true in terms of the language this man used last time and uses this time.

[fol. 416] Mr. Kelley: Wait a minute.

Mr. Witt: Just a moment, let me finish answering the Court's question. May I?

Mr. Kelley: Go ahead.

The Court: Proceed.

Mr. Witt: It is true that on the first trial he referred to it as the conversation.

The Court: Those are two different things. There may be 20 people at a meeting, and, if you ask about a conversation at the meeting, there may have been only two people there. You are not talking about the same thing is the point I am making.

Mr. Witt: Your Honor, I think further argument on my part before the Jury would be improper. May I suggest we pass this now since we are about to recess in a few minutes, and perhaps we can spend a few minutes in Chambers about it?

The Court: He need not answer the question. You can proceed to something else.

Mr. Witt: Yes.

Mr. Kelley: May it please the Court, I think it would be well to correct the record, because counsel has again characterized the testimony of this witness, he said something about this witness used different language last time than he did this time. The different language was in the questions.

The Court: In the questions, that is very obvious.

Mr. Witt: That may be. If Mr. Kelley or the Jury understood me to be characterizing the witness, I didn't intend to.

The Court: It is just this simple it seems to me: The question in one case was, who was present at the meeting, and the question in the other case was, who heard the conversation.

Mr. Witt: Since your Honor is pursuing it, I think it is fair that we say to your Honor that we will be able to [fol. 417] show that even though one place the interrogator referred to it as a conversation and on this trial they referred to it as a meeting, we will be able to show that it was the same incident and exactly the same thing took place with the same people saying the same things, but that is what I want to save for Chambers.

The Court: All right.

Q. Mr. Eckert, in connection with your testimony last week about a meeting which was held in the Communist

Party office in Chicago prior to the meeting at Henry Horowitz's in 1947 I will read you the following questions and your answers to them: "Question: Now, I believe you stated that there were two meetings of the Steering Committee in Chicago prior to the 1947 convention in St. Paul. Do you recall when in reference to the time of the Horowitz meeting the other meeting occurred? Answer: There had been another meeting prior to the meeting in the Horowitz house in the Communist Party Office in Chicago where these matters had been discussed and decision made there to call what we called at this time an enlarged—" And then the witness's answer was stopped by an objection and sustained by the Court, and then at the bottom of the page the interrogation picks up again: "Question: At this meeting in the Communist Party headquarters will you state who was present there? Answer: Maurice Travis, Gil Green, Fred Fine, Al Skinner, myself, Harold Sanderson. I don't recall whether the other member of the Steering Committee, Chase Powers, attended that meeting or not." Now, do you remember those answers of yours to those questions and particularly the last one in which you named those who were present and said you don't recall about Chase Powers?

A. I am not even sure at this point which meeting you are referring to.

Q. I just read it to you, Mr. Eckert. This is the meeting you testified about last week, you can look at it if you want to, which you said took place at the Communist Party headquarters in Chicago in 1947 prior to the meeting at Henry Horowitz's which was prior to the St. Paul convention.

A. I have finished reading this, Mr. Witt.

Q. I beg your pardon, Mr. Witness?

A. I have finished reading this section.

Q. Do you know what witness you were talking about in that testimony?

A. What witness I am talking about?

Mr. Witt: I am sorry. I am too fatigued. I am going [fol. 418] to have to ask for a recess. Let me finish this if I may.

Q. Now, do you remember what meeting you testified to about at this point?

A. Yes, I have in mind the meeting that refers to.

Q. I will ask you again whether you recall last week in connection with that meeting you said these people were present you named here.

A. Well, I said it. It is in the transcript.

Q. Now, Mr. Eckert, I will ask you to listen to the following answers you gave to the following questions when you testified on the first trial against Travis on December 1, 1955, about that same meeting, page 245. If you have any question, it is the same meeting you speak about, Mr. Eckert. "Question: Now, I ask you if prior to this meeting at Horowitz's house whether or not there had been a Steering Committee meeting at which the program of policy or the course the discussion was to take at the Horowitz meeting was named. Answer: Yes. Question: Who was present at that time? Answer: Gil Green, Fred Fine, Maurice Travis, myself, and Al Skinner. Question: Where was this meeting held if you recall? Answer: In the Illinois Communist Party Headquarters in Chicago. Question: And now was this immediately prior to the Horowitz meeting? Answer: Yes." And then I will ask you whether you recall that answer in the course of your testimony on the first trial in which you named Gil Green, Fred Fine, Maurice Travis, and Al Skinner.

Mr. Kelley: Was that the transcript of the first trial or this trial?

Mr. Witt: The first trial. I finished earlier with the second trial.

A. I remember questions and answers along that line, but I am not sure which Horowitz meeting you are referring to though.

Q. You are not clear whether that testimony of yours I referred to on the first trial was the same meeting at the Communist Party Headquarters as you testified to about here last week and which testimony I read you a few minutes ago, you have doubt whether that is the same meeting?

Mr. Kelley: I think he was referring to the one at the Horowitz meeting. He is back at the Communist Party Headquarters now.

The Court: No, the first one was at the Communist Party Headquarters, and the witness has expressed some uncer-

[fol. 419] tainty as to whether the one you just read here was the same meeting he was talking about here on the direct examination on this trial.

Mr. Witt: There may be some confusion here, but I think I am clear on it, so, I think we should have our recess now, and we will try to clear it up when we come back.

Mr. Kelley: May it please the Court, the question arose just slightly before recess in reference to the testimony of the witness on two prior occasions, one being at the first trial of this case in reference to a conversation in Cleveland at the Hollenden Hotel in which we refer in the questions to who was present at the conversation or some such context which appears along about page 230 of Volume II, and in the present trial on direct examination the same incident was inquired into but was referred to as a meeting rather than a conversation, and for purposes of clearing the record I make that statement.

The Court: Then, as I understand, when the word "conversation" was used in the first trial it was synonymous with "meeting" and had the same effect as "meeting"?

Mr. Kelley: That's right, your Honor.

The Court: And that the question in reality propounded on both occasions was who was present at the meeting, is that right?

Mr. Kelley: Yes, sir.

The Court: Does the witness understand it on that basis?

The Witness: Yes, sir.

The Court: Then, the witness will be permitted to answer that last question. You can either restate it or go back to it in the record about his testimony at the first trial.

Mr. Witt: Thank you, Mr. Kelley and your Honor.

Kenneth Eckert, resumed the stand, and testified as follows:

Cross examination.

By Mr. Witt (Continued):

Q. I am not sure, but just to get a little continuity for the [fol. 420] witness and the Jury, I am referring now, Mr. Eckert, to your testimony on the first trial, Volume II, on

December 1, 1955, at page 229 and ask you whether you recall giving the following answer to the following question: "Question: Now, will you state who was present at this conversation? Answer: John Williamson, Maurice Travis, myself, Al Skinner. I don't recall whether Chase Powers was present at that particular conversation or not. He was at the others." I will ask you whether you recall that answer.

A. Yes.

Q. Mr. Eckert, I now refer you to your testimony last year before the SACB on March 27, page 942, the third question from the bottom, and ask you to listen to the answers you gave to the following questions: "Question: Now, I started to ask you about the convention of 1946. Was there a meeting of the Steering Committee prior to the meeting of the convention? Answer: There were a series of such meetings. Question: Where did these meetings take place if you recall? Answer: In Cleveland, Ohio. Question: Is that where the convention met? Answer: Yes. Question: Now, can you separate any of those meetings and tell us who was present at them and what took place? Answer: The first group of meetings we held, and they were held two or three in one day and a couple the next day, were held in the Hollenden Hotel in Cleveland, Ohio, with John Williamson present together with members of the Steering Committee and other people—Sanderson, Morris Wright, Irving Dichter, Herman Clott, these people among others who attended these meetings. Not all of them were present at every meeting. At the first meeting which was of a more formal nature, however, among the people present were those I just mentioned where the general approach to the convention was discussed, and Williamson stated that he thought it was imperative that we obtain a candidate for one of the top offices who had not been identified with the extreme left group heretofore."

Mr. Witt: And I won't read the rest of his answer, because it goes on to subjects which are irrelevant to this examination with Mr. Kelley's agreement.

Q. Now, Mr. Eckert, having heard that testimony you gave in answer to those questions in March of last year I

will ask you whether you recall naming those people you named who were present at at least one meeting with John Williamson.

A. I recall questions and answers in the general way as stated there.

[fol. 421] Mr. Witt: If the Court please, I think when we recessed there was still some confusion about the meeting I was asking him which took place in Chicago in 1947, and the confusion was between the meeting at the Communist Party Headquarters and the meeting at Henry Horowitz's, and I think for continuity, and I do not think it need take too much time, I had better start afresh on that subject so there will be no doubt in the mind of the witness or in the minds of the jurors.

The Court: All right, you can proceed.

Q. Mr. Eckert, I will ask you to listen to this testimony that you gave last week in this trial, page 154, about a meeting in Chicago. "Question: Now, I believe you stated that there were two meetings of the Steering Committee in Chicago prior to the 1947 convention in St. Paul. Do you recall when in reference to the time of the Horowitz meeting the other meeting occurred?"

Mr. Witt: May I stop here with the permission of the Court and Mr. Kelley to say this, to obviate the possible confusion again that we got into before the recess I think Mr. Kelley will agree that before this point to which I am directing the witness's attention he has already testified about the Horowitz meeting, and now he has gone back to this other meeting at Communist Party Headquarters which took place before the Horowitz meeting.

Q. Then, if you recall that question, Mr. Eckert, your answer was: "There has been another meeting prior to the meeting in the Horowitz house in the Communist Party office in Chicago where these matters had been discussed and decision made there to call what we called at this time an enlarged—" and then there is the objection by Mr. Deikman and sustained by the Court, and then the interrogation picks up again at the bottom of the page, 154: "Question: At this meeting in the Communist Party Headquarters will you state who was present there? Answer: Maurice Travis,

Gil Green, Fred Fine, Al Skinner, myself, Harold Sanderson. I don't recall whether the other member of the Steering Committee, Chase Powers, attended that meeting or not." Now, you remember that testimony of yours last week particularly that last answer I read you in which you gave the names of the people who attended that meeting at the Communist Party Headquarters?

[fol. 422] A. I recall that was the general answer to your question.

Q. Now, Mr. Eckert, I will direct your attention to the people you named as being present at that meeting in the Headquarters of the Communist Party in Chicago in 1947 before the Horowitz meeting, the people you named when you testified the first time against Travis, Volume II, December 1, page 245. To get some continuity, Mr. Eckert, I will read you several questions and answers: "Question: Now, I asked you if prior to this meeting at Horowitz's house whether or not there had been a Steering Committee meeting in which the program of policy or the course the discussion was to take at the Horowitz meeting was planned? Answer: Yes. Question: Who was present at that time? Answer: Gil Green, Fred Fine, Maurice Travis, myself, and Al Skinner. Question: Where was this meeting held, if you recall? Answer: In the Illinois Communist Party Headquarters in Chicago. Question: Was this immediately prior to the Horowitz meeting? Answer: Yes." You remember those answers you gave to those questions on the first trial and particularly the answer where you named the people present at that meeting at Communist Party Headquarters?

A. I believe that would be the answer that I gave.

Q. Mr. Eckert, you testified last week about a Steering Committee meeting in the hotel room in St. Paul during Mine-Mill convention in 1947 when you were on the stand last week, page 159. I ask you whether you recall giving the following answers to the following questions: "Now, this one meeting you referred to as a true, I would characterize your statement as being a true Steering Committee meeting, where was that held? Answer: In the hotel room in St. Paul. Question: And who was present at that time? Answer: Present were Maurice Travis, Chase Powers, Al

Skinner, myself, Harold Sanderson, and the National representatives of the Communist Party whose names I cannot recall." Do you recall those answers to those questions and particularly the last answer I read to you where you gave the names of those you recall were present?

A. Yes, I believe that is the answer that I gave.

Q. Now, Mr. Eckert, I will direct your attention to your testimony about a meeting in the hotel room in St. Paul during the convention in 1947, the testimony you gave on the first trial, and ask you to listen to the following answers which you gave to the following questions: "Question: Now, during the convention at St. Paul do you recall a hotel room meeting in which the subject of discussion was the support or nonsupport of a man by the name of Wilson for Eastern Vice President? Answer: Yes. Ques-[fol. 423] tion: And this was during the convention, was it? Answer: There were several meetings held before the convention and during the convention. Question: Do you recall any meeting at which a representative of the National Communist Party, that is, the Communist Party of the United States, National Representative was present? Answer: Yes. Question: And do you recall who that National Representative was at this time? Answer: I don't recall the name. Question: And who else was present at this hotel room meeting? Answer: Maurice Travis, Chase Powers, Al Skinner, and myself." And I will ask you whether you recall that testimony of yours on the first trial and particularly that last answer in the course of which you named those present at that session?

A. Yes, I believe that to be my testimony.

Q. Do you have any explanation for the ladies and gentlemen of this Jury in connection with several of these meetings I interrogated you about that you did not testify on the first trial that Harold Sanderson was present while in connection with this one you remember in 1958, you didn't remember in 1955 that Harold Sanderson was present?

Mr. Kelley: The Government objects to that as testimony by counsel. The record speaks for itself, and it is argumentative.

The Court: I sustained the objection two or three times, but I think I will let the witness answer.

Mr. Witt: Do you want the question read back?

The Witness: I would like to have it read back, please.

(The reporter read the last question.)

A. I don't recall, first of all, the answers to any question of having stated that I did not remember people being present there. The meetings referred to in the question I doubt very much whether the second meeting refers to the first one. My recollection of the events and the testimony I have given here and other places is that at St. Paul prior to and during the convention there were a series of meetings, sometimes several in one day, and the times that I have testified as to the people who were present at the meetings asked by Mr. Witt, I have testified as to the people I recall being present at the times that I could remember. As Mr. Witt calls for an explanation why, I am not a psychologist that I can explain why I can remember at one time more than I can remember at another time, but that is the work- [fol. 424] ings of my mind, and I don't know what the psychological reasons would be, but sometimes as a result of the question or preceding questions my memory is refreshed, and I can remember names of people at these meetings years ago at certain times that other times for one reason or another I may not recall at the precise moment.

Q. Mr. Eckert, if I caught the first part of that answer, were you saying that there is some question in your mind as to whether the meeting of the Steering Committee in the hotel room at St. Paul in 1947, which you testified about last week in this trial, was a different meeting than the meeting which took place in St. Paul in the hotel room in 1947 on the first trial?

A. There is considerable doubt on the basis of the question as you propounded to me whether you are referring to the same meeting or not.

Mr. Witt: If the Court please, if there is any question about that, the prosecution, of course, will handle that on redirect examination.

The Court: Well, I thought you had done that to the extent you were able to do it.

Mr. Witt: I have done it up to the point I am interested in, but, if the prosecution and the witness have doubt about

it, they can go into it on redirect. I have recross examination.

The Court: I think it is a question for the Jury and a matter of argument. You can tell the Jury why you think it was the same meeting, and, if there is any argument the other way, you can make it. I assume you have produced all your evidence.

Mr. Witt: Yes, for my purposes, but what I was referring to now was the normal right of the prosecution on redirect if they have any question about it.

Mr. Kelley: I think we understand our rights.

Mr. Witt: Yes. I am not trying to tell the prosecution, but in view of what the witness said I thought I ought to make that statement.

Q. Mr. Eckert, you gave testimony last week on direct examination about a meeting in St. Paul during the same [fol. 425] convention in 1947 I have been asking you about which you called a progressive caucus meeting, page 163. I will ask you to listen to the following answers which you gave to the following questions about that meeting of the so-called progressive caucus. "Question: You mentioned having attended a progressive caucus meeting, and I will ask you whether or not Mr. Travis attended that meeting. Answer: Yes, he did. Question: And who presided at that meeting if you recall? Answer: I don't recall who presided at the meeting. Question: And about how large a meeting was it? Answer: My recollection is that the meeting contained 50, 60 people more or less. That is about as close as I can recall. Question: And will you name those that you recall being present at that meeting? Answer: The people present were members of the Steering Committee, Maurice Travis, Chase Powers, Al Skinner, and I, Harold Sanderson, Morris Wright, Irving Dichter, Mr. Jencks, Pete Zvara, Ernest Love. These are some of the people I recall having been there. Homer Wilson also." Do you remember naming those people last week whose names I just read you as being present at that meeting of the so-called progressive caucus in St. Paul?

A. Yes.

Q. Mr. Eckert, I will now read your testimony about that meeting of the so-called progressive caucus which you gave

on the first trial against Mr. Travis: "Question: Now, at this progressive caucus that was held following the hotel room meeting was Maurice Travis present? Answer: Yes. Question: Do you recall who else was present, some of those who were present? Answer: Yes. All the members of the Steering Committee were present. The people who had attended the meeting in Henry Horowitz's house, other people who were non-Communists in addition to a considerable number of other Communists, Pete Zvara, Homer Wilson also attended." I will ask you whether you recall that testimony about that meeting in the first trial and particularly the last answer I read you as to what persons attended that meeting of the so-called progressive caucus.

A. No, I emphatically deny that I named Pete Zvara as a Communist at that meeting.

Mr. Witt: I think the witness misunderstood the testimony.

The Witness: That is what you said.

Q. I am sorry, Mr. Eckert. If I said that, I misspoke. You can look at this, and I think it is a question of punctuation. I don't interpret that, Mr. Eckert, and, if the Court [fol. 426] please, and Mr. Kelley, and, ladies and gentlemen of the Jury, as Mr. Eckert's having testified that Pete Zvara was a Communist. I think the punctuation could have been better in that transcript in that answer.

A. I think with the correction in the punctuation which changes the meaning of it that was my testimony.

Q. So, the only question in your mind was whether, the way I read it to you, it sounded as if you had testified that Pete Zvara was a Communist, is that right?

A. That's right.

Q. Now, I will ask you about that answer you gave on the first trial about the people who attended that progressive caucus. In that answer, Mr. Eckert, you said that all the members of the Steering Committee were present, that would be yourself, Travis, Powers, and Skinner, is that right?

Mr. Kelley: May it please the Court, I don't think there is any point in trying to go into the questions asked on the first trial. He has got the actual answer that was given,

and that is as far—we can't try collaterally the first trial over again.

The Court: Well, I don't know whether that is what he is trying to do or he is trying to ask him something he presently recalls.

Mr. Kelley: I don't either for sure.

Mr. Witt: Yes, sir, this is preliminary, your Honor. There is another matter of impeachment I want to get to in connection with his testimony in this trial.

Q. So, Mr. Eckert, you remember the question?

A. No, I don't think I do entirely.

Q. I will start again. I am referring to the answer you gave on the first trial as to the people who attended that so-called progressive caucus meeting in St. Paul. In your answer you began by saying all the members of the Steering Committee were present. Do you recall that?

A. Yes, that is my recollection.

Q. And then you said, and I quote from the same answer, the same sentence, Mr. Eckert, "The people who had attended the meeting in Henry Horowitz's house." Now, with respect to that part of the answer, the people who had attended the meeting in Henry Horowitz's house, you testi- [fol. 427] fied, do you recall, both on the first trial and last week here in this trial that Gil Green and Fred Fine, two Communist Party officials, attended the meeting in Henry Horowitz's house, do you remember that?

A. Yes.

Q. Do you want me—

A. If I want what?

Q. I will ask you then when you gave that answer on the first trial that the people who had attended the meeting in Henry Horowitz's house also attended the meeting of the progressive caucus in St. Paul you intended by that answer to testify that Gil Green and Fred Fine attended the meeting of the progressive caucus.

Mr. Kelley: May it please the Court, he is cross-examining him about his testimony on the first trial, as I understand.

The Court: I think that is highly argumentative.

Mr. Witt: May I be heard on it a moment, your Honor?

The Court: Yes.

Mr. Witt: In this trial he has now said that he testified about the Horowitz meeting, that these two Communist Party officials, Gil Green and Fred Fine, attended that. You recall that was the meeting immediately prior to the St. Paul convention. In this trial when he testified about the meeting of the so-called progressive caucus in St. Paul he did not use the same phraseology as he used on the first trial, he did not say the people who had attended the meeting in Henry Horowitz's house, and apart from not making that reference he did not say that Gil Green and Fred Fine attended the meeting of the progressive caucus in St. Paul, so, I am trying to impeach his testimony in this case by aspects of the testimony he gave on the first trial.

The Court: Well, I think the form of the question itself was argumentative. Will you read the question, Miss Marson?

Mr. Witt: Perhaps I should try to rephrase it.

The Court: If you wish to argue to the jury about who was there, all right. There is no use of arguing with the witness.

Mr. Witt: Maybe I can rephrase it in simple form. Per- [fol. 428] haps the question was badly put. I do not mean to argue with the witness.

Q. I will ask you now, Mr. Eckert, whether Gil Green and Fred Fine attended the meeting of the so-called progressive caucus at St. Paul.

A. No, they did not.

Q. Now, you testified, did you not, on direct examination here last week about the meeting at Henry Horowitz's that Graham Dolan attended that meeting?

A. Well, I don't recall the testimony.

The Court: I think the record will show what he testified, and you can argue it.

Mr. Witt: I wanted to save a little time.

Mr. Kelley: I think also he went into that previously.

The Court: I remember very distinctly.

Mr. Witt: No, sir. I went into it with respect to the Horowitz meeting. Now, I want to go into it with respect to the so-called progressive caucus meeting, your Honor.

The Court: You are attempting now to fix what is referred to in the answer as being at the Horowitz meeting, isn't that what you want to do?

Mr. Witt: That is preliminary to fixing who was at the meeting of the progressive caucus which is the main subject of my present line of interrogation, and I have to do it, because the way the witness answers by reference to the Horowitz meeting.

The Court: I still, if I understand what you are trying to do, I still think it gets into the argumentative stage, and I think it ought to be argued to the jury, because all the facts are in the record.

Mr. Witt: All right. I think I can simplify it by simply asking the witness this question, if I may, without I hope transgressing your Honor's ruling.

Q. Mr. Eckert, according to your present recollection did [fol. 429] Graham Dolan attend the meeting of the so-called progressive caucus in St. Paul?

A. According to my recollection he did.

Q. Mr. Eckert, I will direct your attention now to your testimony last week here on direct examination about the meeting which took place in New York early in 1948 attended by you, Travis, certain leaders of the Communist Party, and certain leaders of other trade unions, page 174, and I will read you your testimony last week in answer to the following questions: "Question: About when, if you can state, Mr. Eckert, did this meeting occur? Answer: Well, it occurred the early months of 1948, I believe February as near as I can recall. Question: Now, who was present at this meeting? Answer: Present in addition to Maurice Travis and myself were John Williamson, Eugene Dennis, William Z. Foster, Arnold Johnson, Al Lannon, Hugh Bryson, James Matles, Julius Emspak, a couple of people representing the Furniture Workers Union, I don't recall their name, another person representing the or a couple of people representing the Farm Equipment Union whose names I don't recall, a person representing the Furniture Workers Union, I don't recall his name, Ben Gold. These were some of the people I recall having attended that meeting. Question: Do you recall whether or not there was a representative of the National Maritime Union there? Answer:

I mentioned Al Lannon was there in that capacity. Gil Green was also there." Do you remember that testimony of yours last week and particularly do you remember naming those leaders of the Communist Party and those officials of trade unions including Travis?

A. Yes.

Q. Mr. Eckert, you testified about that meeting in New York early in 1948 when you testified against Ben Gold in Washington, D. C., didn't you?

A. Yes, I believe I did.

Mr. Witt: May we go off the record a moment?

(Discussion off the record.)

The Court: You can proceed, and, if Mr. Kelley thinks there should be objection, he will make the objection.

Mr. Witt: For your Honor's information particularly because I don't think this would concern the jury may I state for the record that what I have is not the typewritten transcript of testimony in that trial but the appendix to the appellant's brief which was used on appeal to the Court of Appeals in the District of Columbia. It has been used on other occasions without objection from [fol. 430] the Government.

Q. "Question—" This is by Mr. Lowther, Government Attorney on your direct examination in the Gold Case, Mr. Eckert. "Question: Subsequent to this meeting with Mr. Gold were there other meetings attended by you with Mr. Gold? Answer: I attended another meeting, at least one other meeting of top Communist officials in New York City where Mr. Gold was present." And then counsel for the defendant at the top of page 1428 asks that the time and place be fixed. Then, the next question on page 1428 by Mr. Lowther: "Question: Do you recall when and where it was, Mr. Eckert? Answer: We attended a meeting in New York City early in 1948 in a trade union center. I don't know what street it was on. We got in a taxicab and went down there. Question: Who went with you? Answer: Maurice Travis accompanied me. Question: Is this the same Maurice Travis that you have testified was the Mine-Mill—" And Mr. Lowther never finished that question. The witness answered, "Yes. Question: How

did you happen to go to the meeting? Answer: I was instructed by Maurice Travis to attend that meeting." And then I will skip the next question and answer, because it has to do with the time of day, and then I get to the question about who was present. "Question: Who to your recollection was present at that meeting? Answer: This was quite a large meeting. Present were officials of the Communist Party, John Williamson, Trade Union Secretary of the Communist Party of the United States, Eugene Dennis, the General Secretary of the Communist Party of the United States, William Z. Foster, National Chairman of the Communist Party of the United States, Arnold Johnson who was I believe at that time District Organizer of the Communist Party in Ohio, Gilbert Green, District Organizer of the Communist Party in Illinois, and there were other Communist Party officials, and a number of trade union officials from various unions, Maurice Travis and myself of the Mine, Mill and Smelter Workers, Benjamin Gold from the Fur Workers Union. There was Mr. Matles and Mr. Emspak from the United Electrical and Radio Machine Workers of America." Then I will skip the next question, because it is not relevant. Question on page 1429: "Other than Matles and Emspak from UE who were the other labor leaders who were Party leaders at that meeting? Answer: Mr. Perlo of the Furniture Workers Union, Mr. Brighton from one of the unions on the West Coast."

Mr. Witt: May I stop at this point, if the Court please and Mr. Kelley, to correct that typographical error? I [fol 431] don't think there is any question about it. The witness testified in this trial that a Mr. Bryson attended the meeting, and in this appendix in the Gold case it says Brighton. I think Mr. Kelley will agree and we can stipulate that that is a typographical error and the name is Bryson.

Mr. Kelley: We assume that is correct.

Mr. Witt: You can ask the witness, Mr. Kelley.

Mr. Kelley: Mr. Eckert, is the name "Brighton" in there a typographical error to the best of your knowledge?

The Witness: If I testified about a Brighton being there, I meant Bryson.

Mr. Witt: Then, in the ipulation accepted, your Honor, that that is Bryson in the Gold appendix?

The Court: All right.

Q. "Mr. Lannin from the National Maritime Union, Mr. Oakes, and two other officials of the Farm Equipment Workers Union of America. There were a number of other people whose names I don't recall, a few I didn't even know."

Mr. Witt: I just want to make sure, your Honor, it will take me a moment to make sure that the witness on the Gold case didn't later after further interrogation come back with some other names. No, I think that does it. Thank you.

Q. Now, Mr. Eckert, having heard that testimony of yours in the Gold case particularly those names you mentioned of the people present do you recall naming those people in the Gold case as having been present at that meeting?

A. I don't recall the testimony in the Gold case.

Q. Mr. Eckert, do you recall testifying about that meeting on the first trial against Travis?

A. Yes, I think I did.

Q. Do you recall whether you testified on that occasion that Bryson attended that meeting?

A. I don't recall whether I mentioned Bryson's name at that time or not.

Q. Mr. Eckert, I will ask you to listen to the following testimony you gave on the first trial against Travis as to who was present at that meeting in New York: "Ques-[fol. 432] tion: And with whom did you go to that meeting? Answer: With Maurice Travis.

Question: Now, were there any other representatives of the International Union of Mine, Mill and Smelter Workers at that meeting? Answer: No. Question: Now, will you tell us who else was present at this meeting, and when you do, if you would—it might save some time—if you would tell us who they were at the time. Answer: John Williamson, National Trade Union Secretary of the Communist Party; Eugene Dennis, General Secretary of the Commu-

nist Party of the United States; William Z. Foster, who had the title of Chairman of the National Communist Party, I believe his title was; Arnold Johnson who was the Ohio State Secretary of the Communist Party; Gil Green, the Illinois Secretary of the Communist Party; other Communist officials; and in addition to them a large number of trade union officials who were members of the Communist Party including Ben Gold who at that time was National President of the Fur and Leather Workers Union, Julius Emspak, and Matles, both officers of the United Electrical and Radio Machine Workers Union, Allanson from the National Maritime Union—" The transcript reads "Allanson from the Maritime Union". I am prepared to stipulate in reading the answer that that is a typographical error and the witness there was referring to Al Lannon.

Mr. Kelley: It is so stipulated.

Mr. Witt: Of the Maritime Union. It goes on.

Q. "Al Lannon from the National Maritime Union—I don't know if he had a title in that Union or not—several representatives of the Farm Equipment Workers Union whose title in that Union I don't know, a representative of the Furniture Workers Union whose name I do not recall, and a number of other trade union people who were Communists." And I think that is the end of your testimony, Mr. Eckert, on the first trial as to who was present at that meeting in New York in 1948, and I will ask you whether you remember naming those people as being present at that meeting. A. Yes, I think those are the people that I named.

Mr. Kelley: It is understood, Mr. Witt, that you are still referring to those named on direct testimony and not those that may have been named later on cross examination?

Mr. Witt: Yes, as far as I know there were no further names on cross examination, but, if I am wrong about that, [fol. 433] again, it is a matter for redirect.

Q. Mr. Eckert, I now will read you the testimony you gave about this meeting when you appeared before the SACB in Washington last year.

Mr. Witt: I think I can save a little time by skipping the preliminaries, if the Court please. I am sure Mr. Kelley will agree this is testimony about that same meeting. "Question: Can you tell us who was present at that meeting or as many as you can recall? Answer: Present were John Williamson, National Trade Union Secretary of the Communist Party of the United States; William Z. Foster, the National Chairman of the Communist Party of the United States; Eugene Dennis, who was General Secretary of the Communist Party of the United States; Arnold Johnson, Ohio State Secretary of the Communist Party; Gil Green, Illinois State Secretary of the Communist Party of the United States. These were the Communist Party officials that I can recall. The trade union officials who were members of the party present were Al Lannon an official of the National Maritime Union, official at that time, Julius Emspak, International Official of the United Electrical, Radio and Machine Workers; James Matles, International Organizational Director of the International Electrical, Radio and Machine Workers of America; Grant Oakes, President of the Farm Equipment Workers Union of America; Travis and myself, of course, Ben Gold, President of the International Fur Workers Local Union, and a member of the Central Committee of the Communist Party at that time. These were some of the people I recall attending the meeting." You remember that testimony in Washington last year before the SACB particularly testimony you gave about who was present at the meeting?

A. That appears to be the testimony I gave.

Mr. Witt: All right then, still referring to the witness's testimony in Washington last year before the SACB there came a time, if the Court please and Mr. Kelley and ladies and gentlemen of the Jury; when the witness came back to that subject, and this is the only other place in that testimony as far as we could find it.

Q. So, Mr. Eckert, I will ask you whether you recall your further testimony before the SACB in Washington last year, page 1091, when you were asked the following questions on direct examination about James Durkin. "Question: [fol. 434] Do you know James Durkin? Answer: Yes. Ques-

tion: Where did you meet James Durkin? Answer: I first met James Durkin in California in the early 40's. Question: And did you have occasion to meet him subsequently to that time? Answer: Yes. Question: Was he a member of the Communist Party? Answer: Yes. Question: Do you recall where you met him? Answer: Yes. Question: Where was that? Answer: At the meeting in New York City at the downtown trade union center."

The Court: What does this have to do with the case here on trial?

Mr. Witt: Well, your Honor—

Mr. Kelley: I haven't the slightest idea, your Honor.

Mr. Witt: Do you want me to answer that in front of the Jury? I will be happy to.

The Court: I think the jury will be instructed to disregard what you are reading. I can't understand what it has to do with this case on trial.

Mr. Witt: May I have the Court's permission to state our position as to what it has to do with the issues in this trial?

The Court: All right.

Mr. Witt: With respect to this particular piece of testimony about James Durkin I was coming to the last answer to that where he answers that James Durkin attended this meeting in New York in 1948, that being the first time, and this is argument to the jury, your Honor, I am sorry, but I have to answer your Honor's question, and this is the first time, this being in 1957 before the SACB that he ever mentioned the name of James Durkin as being—

The Court: Then ask that. You are reading a lot of preliminary matter. Ask him the question, and, if it is pertinent, we can rule on it. Ask him if he testified whenever you say the occasion was that this man was present. That is all there is to it. The rest of it is all a matter of argument.

[fol. 435] Mr. Witt: No, sir. I thought this was the procedure we agreed upon in Chambers.

The Court: If it is relevant.

Mr. Witt: I would just as soon make it short. But anyway, as I said, I was coming to the final answer.

The Court: What you read has no relevancy on the basis you are indicating. The jury will disregard that, and, if

you wish to interrogate about the presence of any person at this meeting, you may do that.

Mr. Witt: I am sorry. I just want to be fair to the witness. I will be glad to shorten it as you suggest with Mr. Kelley's agreement.

Q. Anyway, Mr. Eckert, do you recall that when you were asked where you met him after having met him in California you gave the following answer, and this is the point, your Honor, and your answer was as follows: "At the meeting in New York City at the downtown trade union center that I testified to where the subject of non-Communist affidavits was discussed." Do you remember giving that answer to Mr. Broome about Mr. Durkin's attendance at the meeting in New York?

The Court: I still don't see the relevance. What is the Government's objection?

Mr. Kelley: The Government—Mr. Witt is talking about being fair to the witness, I think, if he is going to talk about something that appears to be so disconnected from any of this other testimony, that the witness should have an opportunity to read enough of this transcript to find out if he is talking about the same thing.

Mr. Witt: I am trying to save time.

Mr. Kelley: I can see no relevancy.

The Court: The thing is so simple. If I understood Mr. Witt's purpose, as I understand, he is trying to show that at one of these hearings he omitted a certain name that he said was present in another hearing. It is just as simple to [fol. 436] ask him that. There is no use of going into all of this side matter about when he became acquainted with the witness and all that. Simply ask him if mentioned whatever this name is when he testified now or in this particular trial here. That is the question.

Mr. Witt: Perhaps it is my understanding, but I thought, we agreed in Chambers that with respect to this kind of examination that instead of examining the witness with general questions and preliminary questions in each case I would confront him with the transcript, number one, and, number two, I think in fairness to the witness I want to give him some continuity, but if your Honor and Mr. Kelley prefer, I will avoid the continuity and go to the question I am interested in.

The Court: It is very simple. Simply ask him the question that you claim is inconsistent or contradictory with testimony he gave in the trial and in other meetings, and this other matter of meeting him in California obviously has nothing to do with this trial.

Mr. Witt: Will your Honor bear with me a moment?

The Court: Yes.

Mr. Kelley: I think maybe, your Honor, I can clear this up.

Mr. Witt: I hope Mr. Kelley isn't going to make any statement in the presence of the witness that the witness should not hear.

The Court: I assume that he is not. What is it you have to say?

Mr. Kelley: I will pass it, and maybe Mr. Witt can straighten out his own problems.

The Court: If you have any question, Mr. Witt, that comes within the pattern you have been discussing that you and counsel discussed in Chambers, you can proceed. Ask him if he so testified at a certain trial.

Mr. Witt: That is my question.

[fol. 437] The Court: You have read a whole page of material.

Mr. Witt: All I can protest to your Honor is that I tried to give him the continuity. I think I understand your Honor now.

Q. Mr. Eckert, having looked at that do you recall giving that answer to the effect that James Durkin attended the meeting in New York City at the Downtown Trade Union Center where the subject of the Non-Communist affidavits was discussed?

Mr. Crandall: Your Honor, interjecting the name Durkin has no relevance to this case. It is beyond the scope of the examination. I think in each of these instances where he has mentioned the various testimony the record will reflect that he said there were more people than the ones he named. So, I do not see where Durkin would make any difference.

Mr. Witt: That is argument to the jury which I am prepared to answer now or later, your Honor.

The Court: I think that probably is in the argumenta-

tive state. The witness can answer that question. Are you sufficiently advised to answer the question?

The Witness: Yes.

The Court: All right, you may answer the question.

A. Yes.

Q. You gave that testimony?

A. Yes.

Q. And did Durkin attend that meeting at the Trade Union Center in 1948?

A. Yes.

Q. Then, Mr. Eckert, are you able to explain to the ladies and gentlemen on this jury and to the Court why it is—

Mr. Kelley: May it please the Court—

Mr. Witt: May I finish my question.

Mr. Kelley: I think the question is improper. It is the same type of question that the Court has ruled on before.

The Court: I let him answer it the last time. I think the [fol. 438] witness is entitled to explain if he wants to. I have been sustaining the objections right along, and I think technically they are good because the jury are the judges in the final analysis about the matter, but you would have a right to ask the witness on redirect examination if he wishes to explain or anything of that sort. I think I will sustain the objection notwithstanding the fact that I let him answer last time, but the Government can develop it on redirect examination.

Mr. Witt: Your Honor, I want to make my record on this. I didn't complete my question.

The Court: I think that's right, but I assume, and I will reserve my ruling until you have completed your question.

Mr. Witt: All right, sir. Can I have the question read?

(The reporter read the last question.)

Q. —why it is, Mr. Eckert, that when you testified in the Gold case in 1954 you did not mention the name James Durkin as being present at that meeting, why it is that when you testified the first time against Travis in this case in 1955 and you gave the names of people present at that meeting you did not mention the name of James Durkin, and why after mentioning the name of James Durkin before the SACB in 1957 when you testified about that

meeting you omitted the name of James Durkin when you testified about that meeting on direct examination last week?

A. Yes.

The Court: I think I will let him answer the question.

Mr. Kelley: It is all right with me, your Honor.

The Court: Since I have heard the form of the question, my statement sustaining the objection will be withdrawn.

A. Without being repetitious as to the reasons for not being able to recall all the names of people who attended meetings many years ago, names that I have recalled at the various times that I have testified, the names of the people that I was more closely associated with and with whom I knew best are the ones that usually would occur to me first. Some of those with whom I was only distantly acquainted were (sic) sometimes they didn't occur at all. Mr. Durkin [fol. 439] happened to come in that category that I knew not very well at all, and in so far as I am able to analyze that appears to me to be the reason why in some of those other cases the names of Mr. Durkin and others whom I have never been able to recall were not mentioned as having been at this meeting in New York City.

Q. All right, Mr. Eckert, in view of that answer I will ask you why it is that when you testified against Gold in 1954 you mentioned the name of Hugh Bryson, that when you testified against Travis the first time in 1955 you did not mention the name of Hugh Bryson, and why it is that when you testified about this meeting and who was present before the SACB in 1957 you did not mention the name of Hugh Bryson, and then when you testified about that meeting on direct examination last week here in connection with that meeting you said that Bryson was one of those present, will you explain why in view of your psychological explanation as to whom you know well and as to whom you don't know well why you mentioned Bryson the first time in all of this testimony in the Gold case and then did not name him on the two subsequent occasions in the first Travis trial and before the SACB and then named him again on the second trial of Travis?

A. Yes, sir.

Q. All right.

A. I think that the only thing I could add again is that for the reasons already stated at the particular time these questions are asked me my recollection is seldom—I am seldom asked to name all of them, but I name those that I can recall at the time. The name of Mr. Bryson which has been mentioned here in this last question, he falls in that category. I mentioned his name when that name occurred to me in the difficulty, great difficulty of recalling these events that occurred so many years ago.

Q. Mr. Eckert, do you recall ever giving a statement to the FBI about this meeting in New York in early 1948?

A. Well, I recall giving the FBI the report of the CIO on the trial of Mine-Mill wherein to the best of my recollection that meeting was testified to by myself.

Q. Aside from giving the FBI a copy of your statement before the CIO did you at any time make a statement to the FBI orally or in writing about this meeting in 1948?

A. Never in writing. I don't recall whether I gave any orally or not.

Q. All right, Mr. Eckert, in view of your testimony that you gave the FBI a copy of the statement about this matter that you made before the CIO I will direct your attention to this typewritten copy of your statement before the CIO.

[fol. 440] Mr. Witt: This wasn't question and answer, if the Court please and ladies and gentlemen of the jury. This was a statement by Mr. Eckert without interrogation by counsel. "Mr. Eckert, I attended a meeting of a Communist meeting in New York City. Maurice Travis called me long distance one day and asked me if I could go to the hall."

The Court: What are we doing, laying a foundation? Ask him the specific question.

Mr. Witt: That is it. That is all one answer.

The Court: You can ask him what part allegedly is contradictory, inconsistent surely.

Mr. Witt: I will skip that paragraph, your Honor. I am so used to getting continuity, but I will skip it. I will go to the next paragraph that is preliminary to what I want to ask the witness.

Q. "Present at the meeting were William Z. Foster, the Communist Party National Chairman, Eugene Dennis, National Secretary, John Williamson, Organizational Secretary, I believe, Maurice Travis, myself, and quite a large number of representatives, leaders of other unions such as UE, Farm Equipment Workers, and others." Then there were questions about that meeting, and at page 263, if the Court please and Mr. Kelley, the witness does name Matles and Emspak of UE whom he didn't name at page 261, and then at page 264 he mentions Ben Gold whom he didn't mention at page 261. Now, having heard those names that you gave as having attended that meeting when you gave the statement before the CIO, Mr. Eckert, I will ask you whether you recall those are the names that you gave on that occasion.

A. Well, I don't recall the testimony I gave in 1950, but, if the transcript appears to say that, and I have no reason to doubt that is the testimony I gave.

Q. Well, Mr. Eckert, in discussion in Chambers on another matter, a matter that was within the province of the Court and not within the province of the jury, that took place in Chambers, didn't you have occasion to say in answer to a series of questions I asked you about your relations with Government agents and Government attorneys that time after time you gave Government agents and Government attorneys copies of your CIO statement?

[fol. 441] Mr. Kelley: That is immaterial.

The Court: I don't know the purpose of that, and I think the jury will be instructed to disregard it in its entirety.

Mr. Witt: I will withdraw it. I am sorry if your Honor thinks it is improper.

The Court: In answer to your question in the transcript he gave the testimony. There is no use for comments on the matter at this time.

Q. In your statement before the CIO you mentioned Foster, Dennis, and Williamson as Communist Party officials aside from trade union people including yourself who were there. Now, I will ask you this question, Mr. Eckert: When you testified in the Gold case, I read you that testimony a little while ago, in addition to testifying

that Williamson, Foster, and Dennis were at that meeting you testified that Arnold Johnson and Gil Green, two other officials of the Communist Party, were also present.

The Court: What we have in question, Mr. Witt, is the testimony in this trial here, not the Gold case.

Mr. Witt: I am coming to that, but I want to make my record, your Honor.

The Court: All right, let's proceed.

Mr. Witt: All right, I will ask him about this case. I will skip it.

Q. Mr. Eckert, in your testimony here last week on direct you testified that in addition to William Foster and Dennis, Arnold Johnson and Gil Green also attended that meeting in New York in 1948. Do you remember that testimony here last week which I read you a little while ago?

A. Yes.

Q. Do you have any explanation as to why it is that when you made a statement in 1950 about that meeting before the CIO you did not mention that Arnold Johnson and Gil Green were present while in 1958 you do mention that those two people were present?

[fol. 442] Mr. Vincent: If your Honor please, I think this has been gone into far enough. The witness has answered.

The Court: I think since we have started that we will let the witness answer again. You can answer the question.

A. As I understand the question, it is in regard to testimony last week and why I did not mention it in the CIO trial, is that the question?

Q. The question is why it is that when you made your statement before the CIO the only Communist Party officials you mentioned as being—

The Court: He has stated the question correctly. He knows the question.

Mr. Witt: I misunderstood him then.

A. I think the reasons that I have stated before apply here also, that Mr. Johnson and Mr. Green were officials of the Communist Party who attended the meeting, their

names did not occur to me at the times that I was asked as to who attended the meeting. The one hearing referred to which Mr. Witt referred to was not a trial in the sense that this is a trial, it was not a Government agency. It was a committee appointed by the CIO to try the Mine, Mill and Smelter Workers on the charge of having—

Mr. Witt: I object to this now. The witness is deliberately attempting to inject prejudice into this case, and I ask that he be directed to cease and desist and answer my question. The fact that this was a trial against the Mine-Mill isn't an answer to the question.

The Court: You asked the question, and the witness is going to be permitted to answer, and you may continue.

Mr. Witt: I do not think he should be permitted to make an inflammatory and improper speech.

The Court: You can read his last few words.

(The reporter read the last answer.)

[fol. 443] The Court: You may continue.

A. —of having been dominated by the Communist Party of the United States and having slavishly followed every twist and turn of the Communist Party policies. The procedure used in the hearing was quite different from the procedure used in a trial such as this. I was asked to recount to the best of my ability in narrative style in the method of just stating a whole series of things that I could remember without having specific questions directed to any given meeting or event other than occasional interjections of questions by some of the committee. For that reason on that occasion without having my attention directed to specific meetings it was much more difficult to remember all the people attending. In addition to the fact that this trial committee did not want to spend months hearing testimony, they wanted to get to the basic facts, I was under pressure to hurry.

In the second instance in the Gold trial, again, it is a question where at the particular time the question was asked me I named the people that I could remember that time, stated others I did not remember other times. Subsequent occasions Mr. Witt has inquired about here it just

so happens that I remembered their names, and so told the Court.

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. Witt: If the Court please, I now move for a mistrial on the ground that this man has been permitted to make a highly prejudicial and inflammatory statement against Mine-Mill in the purpose of the proceedings before the CIO in the same way he has with respect to several other answers he has given on cross examination, and he has done that deliberately in order not only to confuse the issues before the jury, inject inflammatory testimony into this case but also to interfere with my right of cross examination as attorney for Mr. Travis in this case.

The Court: Your motion for mistrial will be denied. The answer was responsive to the question, and the question was propounded by you. You may proceed.

Q. Now, Mr. Eckert,—withdraw that.

Mr. Witt: If the Court please, I ask that at this point [fol. 444] your Honor give the jury a cautionary instruction to the effect that this man's statement about the purpose of the procedures before the CIO is not evidence against the defendant on trial in this proceeding.

The Court: Well, the Court will give consideration to that instruction and listen to any argument on it in Chambers. At the moment it will not be given, but the Court will reserve judgment on that, and, if it is proper, it may be included later. At the moment I see no basis for it. But I am not going to preclude your advising the Court as to why you think it should be given.

Mr. Witt: All right, thank you, your Honor.

Q. Now, Mr. Eckert, in view of your answer I direct your attention again to the question asked you by Mr. Lowther in the Gold case in answer to which you told them who was present at this meeting. "Question: Who to your recollection was present at that meeting?"

The Court: Didn't you already read this?

Mr. Witt: Now, I am coming back to it from another point of view in view of the answer he has just given, your Honor.

The Court: I don't see what basis there is for asking the question twice.

Mr. Witt: Well, I will argue that at the bench if you want to and point out what I have in mind. I can state it in open court if Mr. Kelley has no objection.

Mr. Kelley: I have no objection to his statement categorizing.

The Court: On the basis for interrogating the witness by asking this same question.

Mr. Kelley: I think this has been asked and answered two or three different ways. It seems to me once over would be adequate.

Mr. Witt: In view of the witness's answer the witness has opened up—

[fol. 445] The Court: Complete your question.

Mr. Witt: Can I have the reporter read back the question?

(The reporter read the last question.)

Mr. Witt: "Answer: This was quite a large meeting. Present were officials of the Communist Party." I am done, your Honor. Let me finish the answer, and then your Honor can sustain the objection. Then in answer to that the witness said, "Present were officials of the Communist Party," and named all five of them—Williamson, Dennis, Foster, Johnson, and Green. And what I am seeking to do is to show that that question by Mr. Lowther was no different than the situation that this man had before the CIO.

The Court: That is purely argumentative. You have read it, and it is in the record, and you can argue that to the jury.

Mr. Witt: All right, sir.

Q. Now, Mr. Eckert, I started to ask you before about the occasion you recalled on which you made a statement to the FBI about this meeting in New York, and you said that, if I recollect properly, that you recall giving the

FBI a copy of the statement you made before the CIO, is that right?

A. That is my recollection, yes.

Q. And I think you also said you don't recollect any other statement, oral or written, that you gave the FBI about this meeting.

A. I don't recollect any other, whether I gave other statements or not to the FBI pertaining to that particular meeting.

Mr. Witt: Is it all right if I don't mark this?

The Court: If there is any reference to it in the record, you had better have it marked.

(Document marked Defendant's Exhibit E for identification.)

Q. Mr. Eckert, I direct your attention to Defendant's Exhibit E for identification which is a photostatic copy of what appears to be a letterhead of the Federal Bureau of [fol. 446] Investigation, the office in Cleveland, and which consists of seven pages and direct your attention to page 6, the paragraph I am pointing to, just that one, and the following two short paragraphs, and ask you to read that to yourself and ask you whether it doesn't refresh your recollection that on or about the date on that document you made that statement to the FBI about that meeting in New York City in 1948.

A. I have read it. What is the question?

Q. The question is whether you now recall having looked at that that at that time you made the statement to the FBI about that meeting contained in that document.

A. I don't recall whether I gave the information, but it seems quite accurate, so, I probably did.

OFFER IN EVIDENCE

Mr. Witt: Instead of offering the whole thing in evidence these are three short paragraphs and may I read it into the record?

The Court: Is there any objection?

Mr. Witt: The same as we have been handling testimony?

Mr. Kelley: Well, the only objection, your Honor, is that this doesn't purport to be a verbatim or contemporaneously made statement.

The Court: Well, the witness said it was quite accurate.

Mr. Kelley: As to the content, yes.

The Court: If he can show you what it is he proposes to read.

Mr. Kelley: I know what he wants to read.

The Court: Any objection?

Mr. Kelley: Nothing particularly except it encumbers the record.

The Court: If you have no specific objection, he may read it.

Mr. Vincent: Shouldn't it be received in evidence first, [fol. 447] your Honor? It has only been marked for identification.

The Court: That is what he is doing, is reading it in evidence.

Mr. Witt: Just the three paragraphs in this document which are relevant.

The Court: All right, you may read it, and the record may show that he is reading from what has been marked as Exhibit E.

Mr. Witt: "In March, 1948, N. E. Travis of the MMSW-CIO instructed Eckert to accompany him to New York to attend the Communist Party Trade Union meeting. In attendance at this meeting in addition to Travis and Eckert were Ben Gold, Julius Emspak, James Matles, and other Communist Union officials representing the CP-USA; at this meeting were John Williamson, Eugene Dennis, and W. Z. Foster." That is the only paragraph that is really relevant to my cross examination, your Honor.

Q. So, now having read into the record those paragraphs I would like to ask the witness if he can explain why it is when he made this statement to the FBI in November, 1949, about a meeting which took place in 1948 he stated that the Communist Party officials or the people, I want to be absolutely accurate, quoting from this paragraph, "The people representing the CP-USA at this meeting were John Williamson, Eugene Dennis, W. Z. Foster," and

why he did not mention Arnold Johnson and Gil Green whom he named in the trial five years later.

Mr. Vincent: I think counsel is assuming a fact not in evidence. This witness has testified that he did not recall giving this information to the Bureau is my recollection of the testimony.

The Court: That I think is correct. He simply said that it sounded accurate or something to that effect. He could not recall the specific matter that he gave, whoever wrote up that report, and this is not, this is not a report made by the witness or it is not his testimony.

Mr. Witt: It is a statement as defined in Section 3500. Otherwise, we would not have it in our possession, your [fol. 448] Honor. So, this is as much this man's statement as his testimony on this witness stand.

The Court: I think I will let the witness answer the question. If you have anything to add—

A. The matter referred to in the report to the FBI, I don't recall having given it to them, but the information seemed to me to be accurate as far as it goes. The nature of the questions propounded to me by the FBI in so far as I can recall always dealt with a specific matter.

The Court: If he doesn't recall the specific situation with respect to it, I think an explanation is forthcoming, and he says he doesn't recall specifically what was said about it. So, the objection will be sustained.

Mr. Kelley: Well, your Honor, in view of the fact that the defense has asked for the explanation and he has given part of it I think in fairness to the witness we should let him complete his answer. The Government withdraws its objection.

The Court: The reason the Court is sustaining the objection, it is obvious that the witness is just basing it not on his memory of what happened but upon some kind of an assumption about what might have been the situation.

Mr. Kelley: Well, I quite agree with you, and we have to go on the assumption in the first place that everything he said was recorded and then he is stating how the interviews were conducted, the particular questions were addressed to him and he gave answers to particular subject matters or persons.

The Court: I say he has answered on the basis of general experience. On these other questions we had a specific matter, we had something that was in formal testimony given by him for which he could explain the reasons, but this not even being transcribed by him or even the circumstances such as not to be recalled by the witness I think it would be pure conjecture for the witness to attempt to say why these other names were not included in this report. So, I think the objection will be sustained.

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[fol. 449] COLLOQUY BETWEEN COURT AND COUNSEL

In Chambers

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Mr. Witt: Again, before we get to the witness we have two matters pending before your Honor. We do not press them for rulings now, but we are just referring to them to remind the Court and the prosecution. One is the matter of a motion to strike that piece of testimony of the witness in connection with the CIO proceedings and the cautionary instruction to the Jury. The other has to do with the name of the Agent or names of the Agents in Detroit who talked to this man, Eckert, in April, 1953, about Jencks.

The Court: Well, I will tell you, I haven't had time to look at the transcript this morning. I started to do that; and I had a press of other matters around here, signing some orders and so forth, so, I haven't had an opportunity to look at the record at all. Let's pass up the first matter until I have had a chance to look at the record. I do not know about the other, I do not know exactly what the status of it was. I know the request was made, but I didn't know whether the Government—

Mr. Kelley: I can speak on that, your Honor. The Government is perfectly willing to give them the name of the Agent who sent the telegram. It was Thomas Beckwith, as I recall the name. If Mr. Witt wants to get out a subpoena, I will verify it or I can verify it anyway, but that is both Mr. Vincent's recollection as to what we were told, and it is mine. I had failed to make a note of it at the time.

The Court: All right, you can find the correct name and advise him what it is.

Mr. Witt: Can we do it this way, since we know what the problem is, perhaps the subpoena can be issued in blank if Mr. Kelley isn't sure of the name and we can arrange for service?

The Court: I think the best thing is that you just give him the name.

Mr. Kelley: I am quite sure it is right, and, if we find out it is not, we will so advise you.

[fol. 450] Mr. Witt: We will discuss that further off the record with Mr. Kelley. One other point in connection with the same problem that we should be clear on the record, I am not sure it is, perhaps my memory isn't holding up on it, I think we are entitled to a statement from the prosecution and perhaps from the Court, I am not sure, your Honor, as to whether there are any documents whether they could be called statements within the meaning of Section 3500 or not, any documents in the files of the FBI in Detroit or Washington or anywhenes else which pertains to this interview, whatever you want to call it which the FBI in Detroit had with Eckert about Jencks in April, 1953, aside from this telegram, of course, which we already have.

The Court: You gentlemen can check on that.

Mr. Kelley: We checked on that, and we have made the statement for the record as to the situation as to FBI reports.

Mr. Witt: Yes. I am sorry, I don't recall it.

Mr. Kelley: We have stated that we furnished all reports that can be found in connection with the testimony of the witness on direct examination.

Mr. Witt: Your Honor, I think we are entitled to a more precise statement than that from the prosecution on this issue. I think we are entitled to a statement from the prosecution on this issue specifically, that is, as to whether or not there is anything in the possession of the FBI or the Government anywheres, any kind of a document whether it is a statement as defined in Section 3500 or not in the opinion of the prosecution which deals with the interview which the FBI had with Eckert about Jencks in Michigan in April, 1953.

Mr. Kelley: Well, I do not understand. I have tried to tell counsel that we do not have any more.

The Court: I think the record will have to stand on that basis.

Mr. Kelley: In regard to that telegram or anything else. [fol. 451] The Court: I think we will let it stand on that basis. Is there anything else before you start with Mr. Eckert?

Mr. Witt: I do not think so.

The Court: All right, you can resume your interrogation then of Mr. Eckert.

Mr. Deikman: If it is permissible with the Court, I will continue the examination.

Mr. Kelley: Your Honor, the Government would object to that. It has never been the practice in this Court to permit counsel to switch on cross examination of a witness. I think it is highly improper, and it is contrary to all the practice in this court and as far as I know every other court in the country.

The Court: I think that is true, and in this court generally that is the practice. We do not switch attorneys in the middle of examination of a witness, but, since this is in Chambers, I think I will let Mr. Deikman proceed. But in the Courtroom, of course, I would not consider that. But I think in here we will let you go ahead.

Mr. Kelley: The reason they give, your Honor, is that it is not fair to the witness to subject him to two different types of cross-examiners.

The Court: I think we can proceed. I assume they will follow the same line they did. It is just a matter of continuing on with some other episodes I gather. You can proceed, Mr. Deikman.

Mr. Witt: This further word of explanation which I think the Court and counsel is entitled to: Mr. Kelley states the general principle correctly, but, as your Honor points out, this is not normal cross examination, the kind that takes place before the Jury. Aside from the point, the only point in this switch is that Mr. Deikman acknowledges that I have been working harder than he has, and this is an effort to have him share a little bit of the burden, that is all.

[fol. 452] The Court: Of course, Mr. Deikman will not go back over any of the matters that have already been discussed. It will be purely prospective. You may proceed, Mr. Deikman.

Mr. Deikman: Thank you.

The Court: I don't know where we left off yesterday. Somebody probably has the transcript.

Mr. Deikman: The transcript at page 659 indicates where we left off yesterday. I believe that the questions were in regard to the first appearance by the witness before the Grand Jury in connection with the Travis case in this court. I believe that the witness has stated that he did appear before that Grand Jury and that he talked to attorneys previous to his testimony before the Grand Jury.

Mr. Witt: Your Honor, in this connection we have been intending to get this clear: You will recall that the witness has testified that he did appear before that Grand Jury.

The Court: He testified to that in open court after we went back in there. What I am interested in is not going back over any of this.

Mr. Witt: No. I was about to say in open court the witness testified that his best recollection is that he testified against Travis in 1954 and 1955. So that the record will be clear on this point to be sure there is no dispute about it the record in this case shows that Travis was indicted on October 28, 1954. May it be stipulated that the witness appeared before the Grand Jury in connection with Travis in 1954 before October 28?

Mr. Kelley: If that is the date. I don't even remember.

Mr. Witt: That is the date of the indictment. It was the Thursday before election, you remember, Mr. Kelley. That is why I remember it so well.

Mr. Kelley: I do remember. We will stipulate to that.

The Court: I have found the place in the transcript.

[fol. 453] KENNETH ECKERT, testified as follows:

Examination.

By Mr. Deikman:

Q. Mr. Eckert, previous to your testimony before the Grand Jury in the year 1954 in this District I believe you stated that you had talked to attorneys for the Government.

The Court: That is all in here. Let's do not go back over that. That is in here at page 558.

Q. Do you recall what attorneys those were?

The Court: He said, he has answered that question, "I don't recall which attorneys handled the Grand Jury case on Travis." Let's go on with something new.

Mr. Deikman: All right, your Honor. Would it be all right to refresh his recollection on this?

The Court: No, it is in the record. There is no use of having him report what is in the record.

Q. All right, to go on with this, Mr. Eckert, do you recall whether you talked about Travis or Mine-Mill with those attorneys?

A. Well, my recollection is that there was a discussion pertaining to Travis. I don't recall whether it was Mine-Mill or not.

Q. Did you relate to such attorneys any matters on which you testified on direct on this trial?

Mr. Kelley: The Government objects to that. It is immaterial.

The Court: I will sustain the objection. You can ask him if he talked about the subject of the testimony he gave in the Grand Jury or something like that. I assume he did. I am assuming he did. I am assuming that before he appeared that he naturally talked with some attorney about the thing, but I don't think, as I indicated yesterday, the details of the conversation are pertinent. The question we are interested in here now is whether anything at that time was given in the nature of a statement that would come

within the definition of a statement within 3500, is what I understand the purpose of this thing is.

[fol. 454] Mr. Deikman: All right, your Honor.

Q. At the time that you talked to the attorneys before your appearance before the Grand Jury the first time did you give those attorneys any written statement made by yourself?

Mr. Vincent: We object to it, any written statement, your Honor.

The Court: He can answer if he can, if he recalls. You can answer, Mr. Eckert.

A. I don't recall whether I did or not.

Q. Is it possible that you did give them a written statement?

Mr. Crandall: I object.

The Court: I will sustain the objection. If there is an objection, I will sustain the objection to that.

Q. Did you give the attorneys anything in writing other than in your own handwriting in the nature of written material?

The Court: Well, I do not think you need to answer that question, because it is based on the assumption he gave them something in his own handwriting. He says he doesn't recall that he did.

Mr. Deikman: Well, your Honor, I covered the subject about his own handwriting, and now I am covering the subject of material, written material, other than in his own handwriting.

The Court: But your question, if the reporter will read it back, was on the assumption that he gave them that, and you are asking if he gave them something besides that.

Mr. Deikman: I will rephrase the question.

Q. Mr. Eckert, did you give the attorneys to whom you talked at that time any written material?

A. I don't recall whether I did or not.

Q. Did the attorneys to whom you talked to the best of your recollection take notes on the subject of your conversation with them?

A. I don't remember the discussions with the attorneys [fol. 455] prior to that Grand Jury investigation, and I don't remember whether they took notes of the conversation.

The Court: I am going to interrupt at this point. I want to talk about this juror business.

* * * * * * *

[fol. 456] Examination.

By Mr. Deikman (Continued):

Q. Mr. Eckert, after your conversations with these attorneys about whom we have just been speaking did they show you anything in writing they either individually or collectively, which they had prepared either individually or collectively at that time before you went in to the Grand Jury?

Mr. Crandall: I object, merely to show him anything in writing.

The Court: I do not see where that would come in the category. You might explain, Mr. Deikman, what you have in mind.

Mr. Deikman: Well, your Honor, we have asked a similar question before which the Court permitted, which, of course, relates to preparing on the basis of their interview with them a statement which they then prepare in their office and return to them for approval.

The Court: I didn't understand your question meant that. I may have misunderstood the question. What you are asking, after they talked to him they returned and submitted any statement to him, is that what you are asking him?

[fol. 457] Mr. Deikman: Yes. I would like to avoid the word "statement" because that calls for a legal conclusion on the part of the witness as to what a statement is.

The Court: I didn't understand your question. You might reframe it to cover that.

Mr. Deikman: All right.

Q. After your conversations with the attorneys for the Government did they prepare anything in writing related

to the subject which you had covered in your conversations and show that to you?

A. No, they did not.

Q. Mr. Eckert, do you recall testifying in the first trial of this case?

A. Yes.

Q. How soon before you came out to testify in this case in the first trial did you come into Denver?

Mr. Vincent: We object to that question, your Honor.

Mr. Deikman: I am trying to place the time in which such a statement may have been given, your Honor.

The Court: Well—

Mr. Kelley: It assumes there was one given.

Mr. Deikman: If there was one given, I would like to have the time.

The Court: Why don't you ask when he came to Denver, how far ahead of the trial did he come to Denver on the occasion he first testified?

Q. Will you answer that question?

A. I don't recall how soon I went on the stand after arriving in Denver.

Q. Did you come to Denver several days before the trial in order to prepare your testimony?

A. My recollection is I was here in advance of the opening of the trial all right. Whether it was several days or four or five I just don't recall.

Q. But it was not less than four or five days?

[fol. 458] Mr. Vincent: The Government fails to see the relevancy of this.

The Court: I think I will sustain the objection to it then.

Mr. Deikman: I think a reasonable inference may be made, your Honor—

The Court: You can argue any inferences?

Mr. Deikman: I mean a legal inference, not a factual inference, that a man who appears several days before the trial is bound to have made statements which were—

The Court: I do not think there is anything that would be inferred by that. Ask him what the fact is, about whether it was one day or two days or three days, whom he talked to and what happened.

Mr. Deikman: All right. I thought I was doing that, your Honor.

Q. You say it was about four or five days?

The Court: He didn't say anything of the kind. You are putting into your questions words that aren't in the testimony at all.

Mr. Deikman: May I ask him how soon before the trial and to the best of his recollection would he estimate the number of days before the trial that he was present?

The Court: I do not think he testified that way, but proceed. Ask him if it was a week or two weeks or three weeks, what happened is what I am interested in.

Q. All right, would you answer that question?

A. To the best of my recollection it was less than a week.

Q. Was it more than four days?

Mr. Kelley: May it please the Court, this is immaterial.

The Court: We are not going into all of these details. [fol. 459] Ask him whom he talked to prior to his testifying and what happened.

Q. Mr. Eckert, do you recall whether you were the first or the second witness in that trial?

Mr. Vincent: If your Honor please, that has no relevancy or materiality in this proceeding.

The Court: I do not think you need to answer that question.

Q. Did you talk to any attorneys previous to your appearance as a witness in that trial?

A. Yes.

Q. Do you recall who those attorneys were?

A. Some of them, yes.

Q. Could you give us their names?

A. Well, I talked to Mr. Kelley, to Mr. Mitchell. I think I talked to Mr. Swanson at that time. I am not sure.

Q. Which of those attorneys spent the most time with you?

A. Well, I didn't keep any record of that. I don't know.

Q. All right, let's talk about Mr. Mitchell. Did you talk

to Mr. Mitchell about your testimony in the first Travis trial?

A. Yes, my recollection is that I did.

Q. Did Mr. Mitchell make any notes as to the subject which he was covering with you at that time?

Mr. Kelley: The Government objects to that as wholly irrelevant and immaterial.

The Court: He can answer the question.

A. Well, I don't recall which attorney was making notes at that time.

Q. Was any attorney making notes?

A. My recollection is that some attorney did make notes.

Q. Is it your testimony that Mr. Kelley made notes?

A. I don't recall which attorney made notes.

Q. Did you submit anything in writing to those attorneys?

A. My writing you mean?

Q. Any kind of writing.

Mr. Kelley: That is irrelevant whether he submitted anything in writing unless it was adopted by him.

[fol. 460] Mr. Deikman: The Court won't let me talk about subject matter.

The Court: Let him answer the question, and then, if it can be developed what he furnished them, if he furnished them anything, it can be developed what it was. If he didn't furnish them anything, that is the end of it. You can answer.

A. Your Honor, I don't think I can answer the question yes or no. I think I could explain the situation.

The Court: Go ahead and do that.

A. Prior to this trial and a number of trials I provided the Government attorneys with certain documents which I referred to yesterday such as minutes of the International Executive Board of the Mine, Mill & Smelter Workers, the minutes of the Die Casting Division of the Mine, Mill & Smelter Workers, certain Marxian literature, material of that nature. I don't recall which cases I may have submitted that stuff to the Government or which cases they may have used any part of it.

Q. Mr. Eckert, I believe you testified previously in this trial that you also provided the Government with transcripts of the Mine-Mill convention proceedings and the CIO hearings.

A. Yes, I believe that's right, and certain correspondence which I omitted to mention in the previous answer.

Q. Relating to this correspondence do you recall whether you, what kind of correspondence it was, correspondence by you or what was it?

A. Some of it was correspondence by me, some of it was correspondence by Mine-Mill people to me.

Q. All right, Mr. Eckert, was any of this correspondence from you to Travis?

Mr. Kelley: The Government objects to that as being immaterial. If it was either to or from Travis, he would have copies of it, an original or a copy.

The Court: I think I will let him answer the question.

A. I don't recall whether it was or not.

Q. Was any of the correspondence from Travis to you?

A. I don't recall that either.

Q. Did you provide this correspondence?

[fol. 461] The Court: Let's get into something else. Go ahead and ask the question. As I understand, he hasn't even said that he gave that to the counsel in this particular transaction. He has testified that during the course of these various trials that on some occasions he had given this material to someone, and he doesn't recall definitely which trial this was provided. So, you can go ahead and ask the question, but I don't see how it brings anything in the category we are talking about at all. But proceed.

Q. Did you provide any of this correspondence to the attorneys at the time that I have mentioned?

A. I don't recall whether I did.

. . . . . .

[fol. 469] Q. Now, previous to your testimony in the first Travis trial did any of the attorneys or anyone employed by the attorneys or connected with the attorneys make any mechanical transcription of anything you said?

A. Not to my knowledge.

Q. After your conversations with the attorneys was anything prepared in writing which was returned for your inspection?

A. No.

Q. Now, Mr. Eckert, I believe you testified that you testified before the Grand Jury on the second time in Denver?

A. Yes.

Q. Now, do you recall when that was?

The Court: I think he fixed the time yesterday, didn't he?

Mr. Witt: Yes.

Mr. Deikman: That was in 1956. Can we stipulate to that, Mr. Kelley?

Mr. Kelley: Whatever the date is.

The Court: That was testified in open court. Mr. Witt asked him before the Jury, and he testified, if my memory is good, didn't you?

Mr. Witt: Yes, I think he said '56.

Q. Mr. Eckert, previous to your testimony before the Grand Jury in 1956 did you have any conversation with any attorneys for the Government?

A. Yes.

Mr. Kelley: That is a little general, I think.

The Court: Let him answer it. He has answered the question.

Q. Do you recall who those attorneys were?

A. I don't recall which attorneys I talked to. If my [fol. 470] recollection is right, I talked to Mr. Kelley.

Q. Mr. Broome?

A. Well, I don't recall Mr. Broome being involved in the trial proper. It is my recollection that he was here on an SACB matter.

Mr. Kelley: He is asking about before you testified before the Grand Jury this second time.

A. Oh! I thought you referred to the trial. I don't recall whether—it was not Mr. Kelley that I talked to before the Grand Jury, as a matter of fact.

Q. Was Mr. Kelley the only one?

A. I don't recall whether it was Mr. Kelley. I misunderstood. I thought you were referring to the first Travis trial.

Q. Just to be clear about it, I am talking about your testimony as to your conversations with attorneys before your testimony before the Grand Jury on the second occasion you were in Denver testifying before a Grand Jury.

A. I don't recall which attorneys those were.

Q. To refresh your recollection, to mention the name of Mr. Saar.

A. Who?

Q. Mr. Saar.

A. Mr. Saar? I don't recall him at all.

Q. Would it refresh your recollection to mention the name of Mr. Heflin?

A. I know Mr. Heflin, and I talked to Mr. Heflin on SACB matters. I don't know whether I did in regard to the Grand Jury matter or not.

Q. Would it refresh your recollection to mention the name of Mr. Worthington?

A. I have talked to Mr. Worthington too.

Q. At that time, Mr. Eckert?

A. I don't know whether it was at that time or not. I have talked to him several times I recall in regard to SACB. I don't know whether I talked to him in regard to this Grand Jury action or not.

Q. Would it refresh your recollection to mention Mr. Mitchell?

A. Well, I recall Mr. Mitchell as having been in the first Travis trial, but I am not sure whether he was one of the attorneys I talked to prior to the Grand Jury action or not.

Q. I don't believe the record is clear on this, Mr. Eckert, so, I will repeat the question: Would it refresh your recollection if I mention the name of Mr. Broome?

A. Again, Mr. Broome is one of the attorneys I talked to in SACB matters on a number of occasions including here in Denver, and I am somewhat confused as to which attorneys were handling which at that time before the Grand Jury.

Q. Now, in your conversations with those attorneys at that time—I am sorry, strike that. I am not clear, did you [fol. 471] say that you could not recall whether you talked to more than one attorney on that occasion?

A. I do not recall.

Q. In your conversations or in speaking to such an attorney or to attorneys at that time did you mention Travis or Mine-Mill?

A. I am quite sure I must have mentioned it, but, frankly, I don't remember the conversation, and, therefore, I don't remember whether I mentioned them or not.

Q. Did the attorney or attorneys at that time make notes as to the matters which you related to them?

A. I don't recall. I can't separate the specific meetings relating to that Grand Jury proceedings, so, therefore, I don't know whether they took notes or not.

Q. Would your testimony also be that you cannot recall you gave them anything in writing?

A. That's correct.

Q. Would your testimony also be that you cannot recall whether they presented to you anything which they had prepared for your inspection?

A. Well, of that I am sure, because that never happened in any case.

The Court: I think probably at this time we had better go ahead with the Jury and resume this later.

* * * * * * *

[fol. 481] Q. Mr. Eckert, you testified that you are presently employed by the United Automobile Workers, the UAW. When was it, again, that you first went in the employ of the UAW?

Mr. Kelley: I think this is repetitious, your Honor. I am quite sure that this was covered.

Mr. Witt: Oh, no, please.

The Court: I think this is preliminary. Proceed, Mr. Witt.

A. Shortly after seceding from Mine, Mill & Smelter Workers.

Q. When was that?

A. Well, I think, my recollection is that we voted to leave in June of 1948.

Q. And when was it shortly after you went into the UAW?

A. I don't recall exactly. My recollection is that somewhere between three, four, possibly somewhat longer, I am not sure.

Q. At the time you were an Executive Board member of Mine-Mill before you seceded what was your salary with Mine-Mill?

Mr. Kelley: The Government objects to that as being irrelevant and immaterial to these proceedings.

The Court: How is it relevant?

Mr. Kelley: It has no bearing on anything.

Mr. Witt: I want to show that the true motive for this man's leaving Mine-Mill and going to another union was not, as he tried to state in his direct testimony, but in order to feather his own nest and to make more money and to make life easier for himself.

Mr. Kelley: May it please the Court, those may be all laudable motives, but I do not see any relevancy.

[fol. 482] The Court: I will sustain the objection. I do not see any purpose in that.

Mr. Witt: I have another purpose in mind with respect to this man's connection with the UAW, your Honor, and I will proceed with that line.

Q. Mr. Eckert, when you went into the UAW along with you went the local die casting unions which had previously been affiliated with Mine-Mill, didn't they?

A. Well, not all of them.

Q. Some of them?

A. I beg your pardon, sir?

Q. Some of them?

A. Yes.

Q. And thereafter were there many elections conducted by the National Labor Relations Board, the NLRB, in which the two rival unions on the ballot were Mine-Mill, on the one hand, and UAW, on the other?

Mr. Kelley: May it please the Court, I think that is wholly irrelevant and a collateral matter to the issues in this case.

The Court: What is the purpose, Mr. Witt?

Mr. Witt: This man is affiliated with the UAW. I want to show that at all times since 1948 when this man first became affiliated with the UAW the UAW and Mine-Mill have been bitter rivals, have contested for representation of employees in several plants, and have appeared, that is, Mine-Mill and UAW have appeared on ballots in elections conducted by the NLRB, so that this man as an official of the UAW has an interest in furthering the position of the UAW and doing as much harm to Mine-Mill and Travis as he possibly can.

The Court: I do not believe that is relevant. I will sustain the objection.

Mr. Witt: I had a few other questions that would tie in with that line, your Honor, but in view of your Honor's ruling I suppose in order to conform to it I had better make an offer of proof rather than attempting to interrogate the witness. Whichever way your Honor directs I will do it.

The Court: You can proceed if you wish, and I will pass [fol. 483] on the questions specifically, or, if you desire to take it up in Chambers, you may do that.

Q. Mr. Eckert, isn't it true that at all times since you became affiliated with the UAW that the UAW has been the labor organization which has been the main and principal and constant rival to Mine-Mill in the East in the die casting and fabricating plants while another union affiliated with the AFL-CIO, the United Steel Workers of America, has been the main and principal rival of Mine-Mill in the West in the mines and the mills and the smelters in the nonferrous metals industry?

Mr. Kelley: May it please the Court, that is purely argumentative.

The Court: I will sustain the objection. I think this is far afield, because the rivalry between unions or something of that sort, there is no connection shown that the witness happens to be an official of some union that may be engaged in plant elections or something I think shows nothing that would be relevant to this case.

Mr. Witt: All right, your Honor. I have made the record on it.

Q. Mr. Eckert, in your testimony on direct examination you in this trial testified that before you left Mine-Mill in 1948 you knew the defendant Travis as a member of the Communist Party, and you testified that you knew other people connected with Mine-Mill as members of the Communist Party. Now, in connection with that testimony, Mr. Eckert, I will ask you whether you knew during the period while you were in Mine-Mill and when you knew Travis before 1948, whether you knew that Travis paid dues to the Communist Party at any time.

A. Yes, I can say that I knew he was paying dues.

Q. You can say?

A. Yes.

Q. I am asking you to testify from your knowledge on your recollection, Mr. Eckert, and, therefore, in view of your answer, I will ask you again whether you know from your own experience with Travis that he paid dues to the Communist Party.

A. Yes, I do.

Q. Were you present on any occasion when Travis paid dues to the Communist Party or any person representing the Communist Party?

A. Not that I can recall.

[fol. 484] Q. But you can say, you say that he did pay dues to the Communist Party?

A. Yes.

Q. Do you recall in what city that took place?

A. Well, he told me he belonged to the Party in Chicago.

Mr. Witt: I move to strike that. I didn't ask the witness to say what Travis told him.

The Court: That is the source of his knowledge. It is perfectly admissible as far as I know.

Mr. Witt: It is hearsay. I am not asking the source of his knowledge. I want him to answer my particular question, but this witness, I want him to stick to answering my particular question, if the Court please.

The Court: What was the question, Miss Marson?

(The reporter read the last question and answer.)

Mr. Witt: All I am asking him is the city. He can say Kalamazoo, New York City, Salt Lake City or Denver.

Mr. Kelley: I think the question is ambiguous whether it is where he acquired the knowledge or where he paid the dues.

The Court: Mr. Eckert, you can simply answer if you know what city it was in without stating any more.

A. I don't know what time he is referring to. What period?

Q. I am referring to the period between 1941 or '42—we don't know the date, because the witness has given different dates when he first knew Travis as a member of the Communist Party—until 1948 when the witness left.

The Court: You know what you are talking about. You can fix the date you are talking about.

Mr. Witt: He knows in my other question. He is just wasting time, your Honor. I asked him about the period he knew Travis as a member of the Communist Party. That is very clear in the record, and I am sure the ladies and gentlemen of the Jury remember that. So, I think he is just wasting time and interfering with my cross examination.

[fol. 485] The Court: I think the witness has asked—you asked him what city, and now he is asking that the question be made more specific what time you are talking about.

Q. All right, any time between January, 1942, and June, 1948.

A. Well, at a time during the period contained in your question he was paying dues to the Communist Party.

Mr. Witt: I move to strike that answer.

The Court: Let him answer. I do not know what the answer is.

Mr. Witt: The answer to the question—

The Court: Let him answer. Go ahead and complete the answer.

Mr. Witt: The question is about what city, your Honor, and he started to make one of his speeches.

The Court: He may be going to say he was paying dues in Portland, Oregon, or something else. I don't know what he is going to say. Go ahead, Mr. Eckert.

A. At that time in the City of Chicago.

Q. What time?

The Court: The time that was in your question.

Mr. Witt: Well, your Honor, I want to fix it more specifically with this witness if I may. I can't tell from that ambiguous answer. So, I would like to ask him what time between January, '42, and June of '48 the witness is referring to.

A. Sometime between 1946 and 1948.

Q. Now, with respect to Chase Powers I will ask you the same question that I started to ask you about Travis with respect to dues.

Mr. Kelley: May it please the Court—

[fol. 486] The Court: Let him finish his question.

Mr. Witt: I think Mr. Kelley knows what my question will be. I do not mind the interruption.

Mr. Kelley: I thought you had finished. I am sorry.

Q. Do you know that Powers paid dues to the Communist Party during the period after you came back from the Service at the end of 1945 until you left Mine-Mill in June, 1948?

Mr. Kelley: May it please the Court, that is collateral to the issues in this case and not proper cross examination.

The Court: No, I will overrule the objection. The witness can answer if he knows.

A. I don't have direct knowledge of that.

Q. Do you have any such direct knowledge about Al Skinner during the period you testified? Did you know him as a member of the Communist Party?

A. My recollection is that he did.

Q. Did you see him pay dues to the Communist Party?

A. No, I did not.

Q. I will ask you the same question with respect to Graham Dolan.

A. I don't have direct knowledge of him paying dues.

Q. Then, I will ask you, Mr. Eckert, whether you have direct knowledge of the payment of Communist Party dues by any person connected with Mine-Mill who you said in

your direct testimony you knew as a member of the Communist Party aside from the defendant Travis.

Mr. Kelley: May it please the Court—

Mr. Witt: I want to save time, your Honor.

Mr. Kelley: I think it would save more time if this line of questioning were abandoned. It is improper.

Mr. Witt: I am coming to the end of it. I tried to save time.

The Court: I think the point is, as he said in his direct examination, that certain persons were members of the [fol. 487] Communist Party, and now the cross examination is with respect to the witness's knowledge of that subject, but I do not think you can lump it together the way you have, Mr. Witt, even though the objective is laudable, and I think you are going to have to ask him specifically about specific individuals.

Mr. Witt: All right.

Mr. Kelley: May it please the Court, that is only one way of identifying a member of the Communist Party.

The Court: I think they have a right to test his knowledge with respect to whether these people were or were not, and this is one of the phases. It is not the whole phase, that is certain, but one element in the thing.

Mr. Witt: In view of your Honor's suggestion I wonder whether we could have a short recess now, and then I will try to prepare the questions so that the rest of the cross examination will be expedited.

Mr. Witt: May we have a Bench conference? I think perhaps we can shorten the remainder of the cross examination.

The Court: Yes.

(Conference at the Bench.)

In Open Court

KENNETH ECKERT, resumed the stand, and testified as follows:

Cross examination.

By Mr. Witt (continued):

Q. Mr. Eckert, before the recess I was asking you about your direct knowledge of dues payments by people you named in your direct examination as members of the Communist Party. I will ask you about Clinton Jencks whether you have any direct knowledge that he paid dues to the Communist Party during the period that you testified on direct you knew him as a member of the Communist Party.

A. Well, I don't recall any specific knowledge of that.

Q. Then, I will ask you the same question without repeating the whole thing, I think you know the question, about [fol. 488] William Gately who you said in your direct examination attended the meeting at Henry Horowitz's in 1947.

A. Why, I don't recall specific knowledge of Gately paying dues either.

Q. Now, Mr. Eckert, I will show you again Defendant's Exhibit C for identification being a copy of the minutes of the Executive Board meeting of Mine-Mill beginning February 6, 1946, and ask you to look at the first paragraph which lists the officers and Board members in attendance, and I will ask you to look at that and tell us whether your recollection is now refreshed as to whether or not Chase Powers was present on that occasion.

A. I don't recall whether he was present or not.

Q. And that document doesn't refresh your recollection?

A. No, it does not.

Q. Now, Mr. Eckert, I want to ask you about the time or the date of the meeting at Henry Horowitz's home in Chicago in 1947 before the St. Paul convention. Mr. Eckert, in answer to Mr. Kelley's question about when this meeting at Horowitz's took place last week Mr. Kelley's question is as follows: "Question: When or how long prior to the St.

Paul convention did this meeting occur? Answer: Well, it was just prior to the convention, I believe not more than a few days before the convention opened." Now, Mr. Eckert, I will ask you whether you can fix that date a little better. If you want to do it by reference to the dates of the St. Paul convention, I would have no objection to it.

Mr. Witt: Your Honor, if I may say to the witness, I have a copy of the proceedings of the St. Paul convention, Defendant's Exhibit D for identification which the witness identified the other day which bears the date. I will be glad to show him that to refresh his recollection.

The Court: You can show it to him and ask him if it refreshes his recollection.

Q. Mr. Eckert, I will ask you to look at Defendant's Exhibit D for identification and ask you whether that refreshes your recollection as to the dates of the St. Paul convention.

A. Yes, this refreshes my recollection as to the dates of the convention.

Q. And will you tell us what those dates were?

A. August 25 to August 30.

Mr. Witt: Just so the record will be clear and the witness [fol. 489-499] perhaps won't be misled I want to show these to Mr. Kelley first.

(Document marked Defendant's Exhibit F for identification.)

Q. Mr. Eckert, I show you Defendant's Exhibit F for identification which purports to be a copy of the minutes of the Executive Board of Mine-Mill in St. Paul during the period from August 20 to August 24, 1947. I will ask you to look at that and tell us whether that refreshes your recollection that there was a Board meeting in St. Paul in August, '47, before the convention opened on the 25th of August.

A. Yes. My recollection is that there was a Board meeting prior to the convention.

Q. And do you recollect the date on which that Board meeting began?

A. I notice that date there. I think it is August 20.

Q. Would that be your present recollection, that it was August 20?

A. Well, I don't recollect the date, but it says August 20 there.

Q. Now, coming back to your testimony about the Horowitz meeting on direct examination last week when you said your best recollection was that it took place a few days before the St. Paul convention, did you intend by that answer to say that it took place a few days before August 20 when the Board meeting in St. Paul began or a few days before August 25 when the convention opened?

A. I meant what I said, before the convention.

Q. Now that we have the date of the convention, August 25, I will ask you if you cannot be a little more specific about the date of the Horowitz meeting.

A. Well, the Horowitz meeting was just shortly before we left Chicago to go to the Board meeting which I estimated as a few days before the convention.

Q. Do you recall when you left Chicago to go to St. Paul?

A. No, not exactly.

Q. When you say the Horowitz meeting took place a few days before you left Chicago, would you then be able to fix the date a little more precisely?

A. Well, I didn't say that it took place a few days before I left Chicago.

Q. I am sorry. I misunderstood you. I apologize. Will you tell me again what you said about leaving Chicago? I must have been confused.

A. The meeting at the Horowitz house, as I understand it and as I testified to it, took place a few days before the convention.

Q. And do I understand your answer to be it took place [fol. 500] a few days before August 25?

A. Yes.

Q. You were in St. Paul for the Board meeting beginning on August 20, weren't you?

A. My recollection is that I was.

Q. Then, I will ask you again—I may have asked you but I am confused—whether the Horowitz meeting took place a few days before August 20.

A. I don't recall when exactly it took place. My recollection is that it took place, I characterize it as a few days before the convention. That is my recollection of it.

Q. And I think you already said you don't remember on what date it was that you traveled to St. Paul?

A. No, I don't.

Q. Do I take it from your answers, and correct me if I am wrong, that you went to St. Paul by way of Chicago—I am sorry, I withdraw that. That is confusing. At that time, Mr. Eckert, your office was in Cleveland, wasn't it?

A. The office was there.

Q. Your office?

A. My office, yes.

Q. Now, in getting to the St. Paul convention did you go directly from Cleveland to St. Paul, or did you go through Chicago?

A. I really don't remember whether I left from Cleveland or where.

Q. To refresh your recollection—I withdraw that. I didn't ask you where you left from. I asked you if you traveled directly to St. Paul, directly from Cleveland or whether you traveled to St. Paul through Chicago with or without a stopover in Chicago.

A. I lost you somewhere there.

Mr. Witt: The reporter will read the question.

(The reporter read the last question.)

The Court: Do you understand the question?

A. I don't remember where I left from, so, I can't remember whether I left from Cleveland through Chicago by way of Duluth or St. Paul or wherever that was you stated.

Q. Well then, I will ask you whether you recall how you traveled to St. Paul from wherever you traveled, did you travel by car, by train, or by plane?

A. That I don't remember.

Q. And you don't remember what city you left from then to go to St. Paul?

A. No, I don't remember where I had been prior to that.

Q. Then, to refresh your recollection didn't you arrive

in St. Paul with another person who was affiliated or con-
[fol. 501] nected with Mine-Mill or was an employee of Mine-Mill?

A. I don't remember how I went from Chicago to St. Paul or with whom or with anyone.

Q. Now, you just said you don't remember how you went from Chicago to St. Paul. That is what I was trying to get you to answer before, what city you went to St. Paul from. You are saying now that your recollection is refreshed that you went to St. Paul from Chicago?

A. No. I understood you to ask me how I traveled from Chicago to St. Paul, and my answer was as far as I can recall that I don't know how I traveled there. I don't know whether that is the way I went, directly or how I went.

Q. Either you misunderstood me or I misunderstood you. It is your answer now that you traveled from St. Paul to Chicago?

A. No. I don't remember where I had been just prior to arriving in St. Paul.

Q. Then, Mr. Eckert, getting back to my question as to whether you had a traveling companion—

The Court: He said once he didn't recall.

Mr. Witt: I am asking a different question, your Honor, related to that, and I wanted the record to be very clear.

Q. Getting back to the question I asked you as to whether you had a traveling companion I will ask you whether it is not true that you flew, that you took a plane from Chicago to St. Paul on August 19, the day before the Board meeting opened, and that a person employed by Mine-Mill traveled with you on that plane from Chicago to St. Paul.

A. I don't recall whether that is correct or not.

Q. Normally would it be true that, if you had a Board meeting—I withdraw the question. Mr. Eckert, to refresh your recollection further I will ask you first, the National Office of Mine-Mill was in Chicago at that time, wasn't it?

A. Yes, it was.

Q. And did you know a woman working in the office of Mine-Mill in Chicago in August, 1947, by the name of Marion Kettle?

A. Yes, I did.

Q. Do you remember what work she did in the office?

A. She was a secretary in the office.

Q. Now, I will ask you whether it is not true that on August 19, 1947, you didn't fly to St. Paul with Marion Kettle on the same flight in the same plane.

A. Well, I don't recall whether I flew. If I did, she may [fol. 502] have been on the plane together with other Mine-Mill people. I don't know.

Q. I am trying to refresh your recollection by asking you whether the fact—

The Court: He has answered the question.

Mr. Witt: Well, I could be wrong. I want to ask it from a slightly different point of view.

The Court: He has answered the question. If you have another question, propound it.

Q. Now, Mr. Eckert, you knew Marion Kettle rather well, didn't you?

Mr. Kelley: May it please the Court, it is immaterial how well he knew her.

The Court: He said he knew her, and the objection will be sustained.

Mr. Witt: This is a most important subject, your Honor.

The Court: He said he knew her, and he answered your question. His acquaintance with her would have no bearing on the matter before the Court.

Mr. Witt: Since he still persists in saying that he doesn't recall whether he flew to St. Paul, I think I am entitled to try to refresh his recollection. I have more to say on this, your Honor, but I think we should discuss it.

The Court: The objection will be sustained to that question. You may proceed.

Mr. Witt: Well, I have an offer of proof to make on this, and it will be highly improper for me to make it in the hearing of the Jury, your Honor.

Mr. Kelley: Can't we go along with something else and take it up at the noon recess?

The Court: Yes, we will take it up then. You can proceed [fol. 503] with the cross examination.

Mr. Witt: All right, your Honor, subject to this current matter I would like to discuss in Chambers we are done with our cross examination of Mr. Eckert. Now, we have several other matters to discuss with your Honor it appears to me. I do not want to be presumptuous, your Honor, but perhaps a short conference in Chambers would clear the schedule and your Honor could handle the problem of the Jury with the greatest convenience to everybody.

The Court: The Government has their next witness available, I expect?

Mr. Kelley: Yes, we are ready.

Mr. Witt: Before the Jury is excused may we approach the Bench?

The Court: All right.

(Conference the Bench.)

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In Chambers

Colloquy Between Court and Counsel

The Court: Let's consider these matters that came up since the last conference.

Mr. Witt: First, on this current subject on cross examination, your Honor, I will withdraw the pending question to which your Honor sustained the objection, and I will try to complete my examination on that subject in another way.

The Court: You are not through with cross examination yet?

Mr. Witt: I will be when I finish this, so, at 2:00 o'clock when the Jury comes back I think I will be able to finish this matter in another way within a few minutes with the witness.

Mr. Kelley: You don't want to make your offer of proof?

Mr. Witt: Not now. It may be depending on the Court's [fol. 504] ruling we may want to make an offer of proof after we ask other questions.

The Court: Was there anything else held in abeyance here this morning?

Mr. Witt: May I summarize the situation as we see it, your Honor?

The Court: Yes.

Mr. Witt: And what we have in mind, if your Honor agrees. First, we have the problem of completing Mr. Deikman's examination of Mr. Eckert with respect to Eckert's relationship with Government attorneys. Then, we have one main division of our Chambers examination of the witness left that has to do with his Grand Jury testimony. I was talking about the question of Grand Jury testimony. Mr. Deikman has been asking him, of course, not what he testified to before these Grand Juries, merely his talks with the FBI and attorneys and so forth in point of time in reference to his Grand Jury appearances. What we will seek to do in Chambers, your Honor, on our motion for the production of this man's Grand Jury testimony is to complete our record on that. The record on that will consist of two parts, one, the cross examination of the witness in open court, and, two, further cross examination which we want to continue in Chambers on material which would not at this stage be proper before the Jury but which we think we are entitled to do in order to complete our record on that issue.

The Court: Well, I am in considerable doubt about this second phase of the thing. What has happened in court, of course, we can take that up, but I do not know quite what you mean. It may be better to wait and see what you are trying to develop, but I would like to know what the law is on that. I have already held, I think at least that was my intention, that 3500, of course, didn't cover Grand Jury testimony. I have already held that. I also held that you had laid no foundation for production otherwise, and I don't know what you are trying to do now. What is it you are trying to do? What is it so the Government will know so they can look up the law a little bit rather than have a hiatus on that?

Mr. Witt: I will try to make as concise a statement as possible on that, what we are trying to do. As the record [fol. 505] now stands, as I know it, your Honor has denied our motion for production of this man's Grand Jury testimony which we made at the end of his direct testi-

mony. At that time we agreed, your Honor, with the prosecution, there is no issue of law as to this point, that that does not come within Section 3500. So, as I know it, there is no issue as to that.

We made our demand under the cases and particularly under the Jencks case and that Rosenberg case which I cited in the Third Circuit, but, your Honor denied that motion. Now, we are proceeding to the next stage of that issue as we see it, and our position is that even if your Honor is right in the denial of our motion before cross examination as indicated by the Rosenberg case, we think the cases at least support, would support a motion by us based on inconsistencies and contradictions in this man's testimony which we have already shown and which we will show by further examination in Chambers, and the cases support the conclusion that at the very least your Honor should look at this man's Grand Jury testimony, should examine his Grand Jury testimony on the matters about which he testified both on direct and cross examination, and, if your Honor finds further inconsistencies and contradictions, then under the cases we are entitled to have those parts of his Grand Jury testimony turned over to us for further cross examination.

Finally, we think the cases support our position that where you have a situation which is fairly complicated like this one with respect to different items of testimony and therefore where the burden on the Court in examining the Grand Jury testimony would be too great and where also it would be unfair to the defense not to let the defense examine that testimony for inconsistencies and contradictions the cases support our position that the testimony should be turned over directly to the defense without prior examination by the Court, and that is why we want to complete this.

The Court: What cases, if you are willing to state at this time so that the Government may look into them and save delay of having to postpone the argument until they have had a chance to look into the law, what cases do you wish to state you rely on as giving the right you are asserting now? Do you have any key cases now?

[fol. 506] Mr. Witt: I am sorry, I left my file in court.

I didn't know we were going to get in to discussing the law.

Mr. Kelley: We have submitted a brief on the thing that probably would cover most of the issues. I do not think it is a question of law. It is a question of the interpretation of the facts in this case and applying the law.

The Court: I wonder if there is any case that touches on some factual situation that they think is comparable with this case.

Mr. Witt: I think I can answer that without my file, your Honor, and I think the area of agreement between us and the other side is rather narrow. I may be wrong, but let me try to state it. We, of course, have a copy of the Government's memorandum on that point, and, as we read it, the Government concedes that, if the defense shows an inconsistency or contradiction in open court, that the cases hold that the Court may examine the witness's Grand Jury testimony on that particular point, and then, if the Court finds the Grand Jury testimony is also inconsistent and contradictory of his direct testimony, then the cases hold that that part of the Grand Jury testimony be turned over to the defense.

Now, the area of disagreement, if I read the Government's memorandum correctly—

Mr. Kelley: We do not even agree on what you have said already.

The Court: I think we had better defer the argument. I will read that brief. You left it here the other day. I will read it during the noon hour and, so, I think we had better be back at 1:00 o'clock.

Mr. Kelley: I might say, your Honor, along that line, that it is our position briefly that they have got to have the witness state that he made a statement in his testimony that was inconsistent with what he testified to before the Grand Jury or bring someone else in or show from his lips that he told somebody else something that was inconsistent with what he told the Grand Jury, and I would further say that the fact that a person might put one individual at a [fol. 507] particular meeting testifying one place and leave him out at another would not be an inconsistent statement as to a material issue. The issue in this case isn't whether

Bryson was at that meeting in 1948 or not. If he was put in one time and left out another, it has no bearing on the guilt or innocence of the defendant, and it is not an issue in this case. If you had left Mr. Travis out of these meetings part of the time and put him in another part of the time, that would be the type of inconsistency that in my opinion would be of a material nature and might give them some basis for their argument.

The Court: Well, perhaps we had better wait until the matter comes up to argue it.

Mr. Witt: May I say just one word. I do not think I have said it clearly yet. But Mr. Kelley's statement brings it to mind, his reference to Bryson. Your Honor, that is exactly the kind of further material, not that it is very extensive, that we think would be more properly gone into in Chambers in support of this motion, let me illustrate, and also not to burden and confuse the Jury. Take Bryson, your Honor, I cross-examined this man about Bryson when Eckert testified before the SACB, and I made an effort to bring out why it is that he mentioned Bryson on a particular occasion and not on another, and, therefore, I made an effort to show by that evidence that these inconsistencies as illustrated by the Bryson inconsistency, that is, putting him in one place and leaving him out another, go to the very foundation of this man's testimony about Travis and everything else he said. This is not a case of lapse of memory which is, of course, normal. We want to show that this man knows what he is doing, perhaps not at all times, when he puts a name in and leaves a name out may be normal memory, but we want to show on occasion after occasion this man deliberately puts a name in, and we think this also ties in to your motion for mistrial in connection with the advice the prosecution gave him about his testimony in the Jencks case and on the trial of this case about the Horowitz meeting in '47, the Travis meeting in '48, and about the use of the word "church", it is all a part of one pattern.

The Court: Well, let's start at 1:00 o'clock.

In Chambers

The Court: Mr. Deikman just stated that Mr. Witt would [fol. 508] not be present here in Chambers for the moment at least. He is preparing some notes in connection with further cross examination of the witness, as I understand, and said that we may proceed here without his presence. That's right, isn't it, Mr. Deikman?

Mr. Deikman: That's correct.

The Court: You may proceed.

KENNETH ECKERT, testified as follows:

Examination.

By Mr. Deikman:

Q. Mr. Eckert, before testifying in this trial, in other words, the second Travis trial, did you have occasion to be interviewed by any United States Attorney or any attorney employed by the Government?

A. Yes.

Q. And which attorneys were those?

A. Well, Mr. Kelley, Mr. Vincent, Mr. Crandall.

Q. Now, how long have you been in Denver for this trial?

A. I arrived here a week ago last Friday.

Q. How many days was that before the trial commenced, three days?

The Court: The calendar will show that. That was on the 10th, and the trial started the 13th.

A. That is my understanding, your Honor.

Q. Now, did you speak or were you interviewed by one attorney more than any other?

A. Yes.

Q. Which attorney was that?

A. Mr. Kelley.

Q. And in your interview by Mr. Kelley did he question you concerning your testimony in this trial?

A. He questioned me concerning testimony, yes.

Q. Now, did he at the time that he was interviewing you take notes as to what your testimony was going to be?

The Court: Well, how would he know what the notes were? You can ask him if he took notes.

Q. Did he take notes?

A. I don't recall whether he took notes or used notes from before.

Q. Did you have occasion to see notes from before? [fol. 509] A. Mr. Kelley referred to some notes. I don't recall, I never saw the notes, I don't know what they were.

Q. Did he question you from those notes?

Mr. Kelley: That is not material to this inquiry.

The Court: I do not think so.

Mr. Deikman: In my opinion it was.

The Court: He could have made notes from the transcript in the first trial. We all know that was taken. Bring it down to something that is within this witness's knowledge that would bring it within the category of the statute.

Mr. Deikman: You see it is kind of difficult to get my point across to the Court on this, because at no time have we really gotten down to defining "statement" in relation to notes or memoranda or transcriptions made by the United States Attorney's Office.

The Court: You can ask him—

Mr. Kelley: I think that Mr. Witt made a distinction between the notes and work sheets of the attorneys and statements signed or adopted by the witness. He made that for the record early in the game.

The Court: Well, I think he can proceed, but I do not think this question is proper. You may proceed to interrogate about what happened.

Mr. Deikman: For the record, your Honor, I think it should be stated in the opinion of counsel for the defense even the work product of an attorney is producible under Section 3500 although we do make a distinction between statements signed by the witness and other kinds of notations, writings, or memoranda. But that is only for the purpose of distinguishing work product as such from statement.

The Court: You can proceed and interrogate about what happened, and those matters can be gone into later. Find out what so far as this witness knows took place.

[fol. 510] Mr. Deikman: All right. Now, for the record and for the purpose of the record I would like to ask him whether he was questioned from such memoranda.

The Court: You need not answer that question. I just ruled on that a moment ago. That has no relation to what you are talking about. It doesn't matter what they used to question him from. The point is his connection with the matter. If they used the transcript in the other trial, what bearing would that have on this thing?

Mr. Deikman: I don't know. It is clear that they did use the transcript, and this is sort of a preliminary question, your Honor.

The Court: Well, proceed.

Mr. Kelley: That is what it is, preliminary.

The Court: You are assuming furthermore that he was questioned, and the import of the witness's testimony is they discussed the testimony or went over the testimony or something equivalent to that. I have heard nothing to indicate there was any categorical questioning like the witness was on the stand or anything of that sort. If you wish to develop what happened, you may do it.

Q. Mr. Eckert, were you questioned by Mr. Kelley regarding the subject matter which was in substance your direct testimony in this case?

A. I was asked questions by Mr. Kelley some of which I believe I testified to on direct.

Q. Now, directing your attention specifically to questions that he asked did you observe whether he made any memorandum regarding your answers?

A. I don't recall whether he did or not.

Q. All right. Now, did you make any statements to Mr. Kelley, oral statements other than statements that you made in response to questions?

Mr. Crandall: I object, your Honor. I do not think that is relevant.

The Court: I do not think that question is intelligible to me, and I do not think it is to the witness. So, you need not answer that. You can reframe the question.

[fol. 511] Q. Mr. Eckert, you have stated that you answered Mr. Kelley's questions. Now, did you in your in-

terview with Mr. Kelley, did you state anything in relation to what you testified on direct other than responses to questions? In other words, did you volunteer information?

Mr. Kelley: That is immaterial.

The Court: Let him answer. I do not see the relevancy at all, but I think we will make progress if we let him answer if he can.

A. I may have spoken when I wasn't spoken to. It might have concerned something on direct. I don't know whether it did or not.

Q. All right, in other words, what you are saying is that mainly it was questions and answers, is that correct?

Mr. Kelley: I don't think that reflects his testimony at all.

The Court: He didn't say that at all. Go ahead with your questions and do not assume something.

Q. Did you provide anything in the form of a written statement by you in your handwriting to Mr. Kelley?

A. No.

Q. Did you provide anything in writing to Mr. Kelley at all?

Mr. Kelley: That is immaterial under the statute.

The Court: No, I will let him answer that.

A. No. This is a case where I brought none of that material I referred to I may have brought to other trials.

Q. Did Mr. Kelley bring to you any document for your approval or inspection?

A. No.

Q. Now, were you interviewed separately by Mr. Vincent?

A. No, not that I can recall.

Q. Were you interviewed separately by Mr. Crandall?

A. Not that I can recall.

Q. And, as I understand it, these were the only three attorneys you spoke to before your testimony in this case?

[fol. 512] Mr. Kelley: Well, how far back are you going?

Mr. Deikman: Strike that question.

Q. Subsequent—strike that. In relation to your preparation for your testimony in this trial did you speak to any

other attorneys besides the three that we have already mentioned?

The Court: Well, again, that might go back to the beginning of time. Ask him, he said he came here on Friday, the 10th of January, ask him if he talked to anyone.

Q. In relation to your preparation for trial in this case, your testimony in this case and since Friday and before trial have you spoken to any other attorneys for the Government in relation to Travis or Mine-Mill other than Mr. Kelley, Mr. Vincent or Mr. Crandall?

A. No, to the best of my recollection I have not.

Q. Did you at any time that you were interviewed by Mr. Kelley and/or any other attorneys in relation to this time that I am talking about in the previous question see your statements were mechanically transcribed?

A. No, I did not see any such contrivance.

Q. At the time that I am talking about, in other words, two weeks ago, in which you were interviewed by Mr. Kelley and/or any other attorney was a stenographer present?

A. No.

Q. Was anyone other than a stenographer present who took notes outside of Mr. Kelley, Mr. Crandall or Mr. Vincent?

A. I observed no one taking notes during these interviews.

Q. Now, previous to last Friday at which time you arrived in Denver had you spoken to any attorneys in relation to your testimony, preparation for that testimony specifically for this trial?

A. I spoke to an attorney prior to this trial in—prior to last Friday in relation to this trial or, rather, Friday, the 10th.

Q. Yes, the 10th.

Mr. Witt: I think Mr. Deikman misspoke himself. He spoke about the witness's arrival last Friday.

Mr. Kelley: The record is clear on it.

Q. You understand I am speaking about the 10th?

A. Yes.

[fol. 513] Q. You did speak to an attorney prior to the 10th of this month, is that right?

A. Yes.

Q. Was that an attorney employed by the United States Government?

A. Yes.

Q. What was his name?

A. Their names were Mr. Vincent and Mr. Crandall.

Q. And where was that interview?

A. I had spoken with them. I presume you mean telephone too?

Q. Was it both telephone and private interviews?

A. Yes.

Q. Now, in relation to your private interviews where did that take place?

A. Grosse Pointe, Michigan.

Q. I presume that was in the office of Mr. Vincent or Mr. Crandall, you can correct me if that is wrong.

Mr. Witt: That is the witness's home.

The Court: Ask him where it was, would be the very simple way to find out.

A. My home.

Q. Was anyone else present there besides yourself, your family?

The Court: He hasn't said anything about his family being there.

Mr. Deikman: I am trying to exclude anybody but Government agents.

The Court: Ask him who was there.

Q. Was anyone else there besides—strike that. Did anyone employed by the United States Government accompany Mr. Vincent and Mr. Crandall?

A. No.

Q. Did Mr. Vincent or Mr. Crandall take notes in regard to your interview at that time?

A. No, they did not.

Q. Was any mechanical device used to transcribe your statements at that time?

A. It would be very hard for me to believe that there was. I am sure that there was not.

Q. Did you provide Mr. Vincent or Mr. Crandall at that time with anything in writing?

A. No, I did not.

Q. Now, you spoke of telephone conversations. With whom did you speak over the telephone?

A. At one time I spoke with Mr. Crandall I believe, and [fol. 514] on the second occasion I spoke with Mr. Kelley.

Q. Where were you speaking from?

A. When I spoke with Mr. Crandall I don't remember whether I was at home or in the office in Detroit.

Q. That was over long distance telephone?

A. Well, he was calling from Washington, I believe.

Q. And was it long distance telephone with Mr. Kelley?

A. Yes, I believe Mr. Kelley was speaking from Denver.

Q. In either of those interviews or conversations were you advised that a mechanical transcription or device was being used?

A. No.

Q. Now, in relation to your interview or interviews with Mr. Crandall and Mr. Vincent in Grosse Pointe was that more than one interview?

A. No, just one interview.

Q. How long did that interview last?

A. Well, I think, I don't think it was an interview. Maybe it could be called that. They were there several hours I believe.

Q. How long?

A. Several hours I believe to the best of my recollection.

Q. Now, on what date did that take place, do you recall?

A. No. It was a week or two before I came here.

Q. Mr. Eckert, I believe you stated that in your opinion it was not an interview. What would you call it?

A. Oh, sort of a chit-chat possibly.

Q. Now, after that chit-chat did they exhibit anything in writing to you based on your chit-chat with them?

Mr. Vincent: If your Honor please, they have shown no relevancy in this yet.

The Court: What he means by that, did you prepare a statement and submit it to him, I gather is what he means.

A. No.

Q. Is it your testimony, Mr. Eckert, that Mr. Vincent and Mr. Crandall traveled from some other point in distance from Grosse Pointe—

The Court: He hasn't testified to anything like that. They showed up in Detroit, where they came from—or Grosse Pointe—where they came from is immaterial.

Q. Did Mr. Vincent or Mr. Crandall inform you of where they were from?

[fol. 515] Mr. Kelley: That is objected to.

The Court: Well, what is the point? I would assume that they were, came from Washington whether directly or indirectly, and what is the difference where they came from?

Mr. Deikman: Well, maybe we can rephrase the question so that your Honor can rule on it.

Q. Did Mr. Vincent and Mr. Crandall come to Grosse Pointe just simply to chit-chat with you, Mr. Eckert?

The Court: That calls for a conclusion on his part. He has testified to the fact that they were there, and that is all that is relevant.

Q. Do you recall testifying before the SACB?

A. Yes.

Q. And when was that?

Mr. Kelley: That is all in the record, I think.

The Court: What is the point about the time? You have the transcript, and I think they have been referred to by specific dates.

Mr. Deikman: That is what I mean, your Honor. The witness knows, and I thought we might be able to pin this down to some particular time.

Q. Before you testified before the SACB.

The Court: He said he talked to these gentlemen about a week or two before he came to Denver.

Mr. Deikman: That's correct.

The Court: What is the point about all of this?

Mr. Deikman: I am now going to the SACB.

The Court: Proceed. Ask him what you wish to ask him.
Mr. Deikman: All right.

[fol. 516] Q. Mr. Eckert, do you recall that you have testified that you did previously testify before the SACB in March and April of 1957?

Mr. Kelley: The record shows that.
Mr. Deikman: I think the witness can answer.
The Court: I think he has answered it about 40 times, is the point I am trying to make. I do not think there is any question about it.
Mr. Deikman: If there is no question about it, we can go to the next point.

Q. Before you testified before the SACB did you talk to any attorneys concerning Travis and/or Mine-Mill such attorney being an employee of the United States Government?
A. Yes.
Q. Now, were there one or more attorneys?
A. There were, let's see, there was more than one.
Q. Can you tell me their names?
A. Well, at various times there were Mr. Broome, Mr. Heflin, Mr. Worthington.

Mr. Kelley: This has already been gone into before.
Mr. Deikman: Not in relation to this period, your Honor.
The Court: No, I do not believe they have.
Mr. Kelley: He named the attorneys.
Mr. Witt: He anticipated that this morning. That is what Mr. Kelley is thinking about, another connection.
The Court: I do not believe this precise matter is in the record. Proceed.
Mr. Kelley: I am sorry.

Q. Did you also talk to Mr. Saar?
A. I don't recall the name.
Q. Now, you stated I believe that you talked to them over a period of time, so, there was more than one occasion, Mr. Eckert?
[fol. 517] A. That's right.
Q. How many occasions would you say there were?
A. Well, I don't know, quite a number. I would hate to guess. I don't know.

Q. With which of the attorneys that you have mentioned, Broome, Heflin or Worthington, did you spend the most time in regard to Travis and/or Mine-Mill?

Mr. Vincent: The Government objects to that.

The Court: I will sustain the objection. Why don't you ask him with reference to whether any notes were made or something that has some relationship to this thing by any of them and then ask him who made the notes? I do not see that this great detail is adding anything to the situation. What you are ultimately concerned with is what was done in the way of something that might come within the category you are talking about.

Mr. Witt: If the Court please, may we confer for a moment, and then I think we can probably shorten this considerably now, wind it up.

Mr. Deikman: I think we can shorten this considerably, your Honor.

Q. In what cities did your conversations with Mr. Broome, Mr. Heflin, and Mr. Worthington take place?

A. Well, I recall Washington, D. C., here in Denver. I don't recall whether there were any other cities.

Q. I am speaking in relation to your testimony, your preparation for testimony before the SACB. Is that what you mean by referring to Washington and Denver?

A. Yes.

Q. Now, were those the only two cities in which you held those interviews or conversations?

A. Those are the only two that I recall.

Q. Where was the interview in Washington conducted, or interviews?

A. We met in the Justice Department Building. I think that is the only place that we held any interviews.

Q. Now, in connection with your interviews in Washington, am I correct in understanding your testimony as being that there was more than one interview?

A. Yes.

Q. How long would you say all the interviews with Broome, Heflin, and Worthington were in point of time?

[fol. 518] Mr. Vincent: The Government objects to that, your Honor.

The Court: Oh, I think I will let him answer.

A. I don't know how long it was.

Q. Would you be able to give us an estimate as to whether it took just a few minutes or several hours or several days?

A. Well, the interviews ran more than several days, six or seven days or more. I don't recall.

Q. I don't believe you understood me, Mr. Eckert. I don't think you are being fair to yourself on this. You don't mean to say you were interviewed for seven days in point of time straight, do you?

A. No, I didn't say that.

Q. Assuming that there were seven days which you seem to approximate how many hours each day were you interviewed?

A. I don't recall.

Q. Would you be able to estimate that it was about a couple of hours each day or more than that?

Mr. Vincent: If your Honor please—

A. Sometimes it may have been 15 minutes or sometimes three hours. I don't recall.

Q. Now, in your interview or interviews in Washington, I mean in Denver, was that more than one interview?

A. Yes.

Q. And am I correct in remembering your testimony to be that that was solely with Mr. Broome?

A. No, it wasn't.

Q. Was there also Saar, Heflin—strike that.

The Court: Ask him who else was present.

Q. Who else was present, Mr. Eckert?

A. I recall occasions when Mr. Broome was present and Mr. Heflin. I just don't place Mr. Saar.

Q. Was there anyone else?

The Court: You have asked him that. Proceed and ask him something new.

[fol. 519] Mr. Deikman: I didn't understand his answer to be final. I will go to something else.

The Court: You asked him who he talked to about the case and you have gone over all of these names and everything else.

Mr. Deikman: I am trying to establish whether Mr. Worthington spoke to him in Denver.

The Court: He said he didn't recall the name.

Mr. Deikman: He didn't recall Mr. Saar but he recalls Worthington.

Q. Was Worthington in Denver?

The Court: He has testified who was present up to date. Go ahead with the testimony.

Q. How many days did you spend in Denver in regard to your interviews with Mr. Broome and Mr. Heflin?

A. Well, I answered previously six or seven days. I was referring to six or seven days total time spent with these attorneys in regard to SACB both in Denver and in Washington.

Q. How long before the SACB hearings was it that you were in Denver speaking to Mr. Broome and Mr. Heflin?

The Court: What possible relevance could that have now?

Mr. Deikman: So we can establish there was a statement on a particular day we wish to move the production of.

[fol. 520] The Court: I think one of the things you had better establish first is that there was a statement before we get to the specific date.

Mr. Deikman: All right.

Q. Now, at the time you were being interviewed by these attorneys that you have mentioned did they take notes?

A. I believe Mr. Broome took notes.

Q. Did you provide anything in writing to Mr. Broome?

A. My recollection is that I provided Mr. Broome with the type of documents that I previously described here—Marxist literature and so on.

Q. Was any mechanical transcription made of your statement at that time?

A. Not that I know of.

Q. Was a stenographer present?

A. No.

Q. Did they at any time in these interviews produce anything for your approval in writing?

A. No, not that I know of. I am not sure what you mean

by approval. What Government exhibit they may have shown me I don't know.

Q. When you say Government exhibit was that a Government exhibit that would contain any of your testimony?

A. No, I don't recall of any such exhibit as that.

Q. Would that exhibit contain any narrative matter by you?

A. What?

Q. Would that exhibit contain any narrative matter made by you?

A. I don't recall whether any of the Government exhibits contained that or not.

Q. Did any of these Government exhibits contain any statement by you?

A. That I don't recall.

Q. Now, you didn't understand what I meant by approval, so, I will state it this way: Did the Government attorneys prepare anything as a result of their interview with you which they reduced to writing and presented to you for your inspection?

A. Not that I can recall.

Mr. Deikman: That completes our examination on this point.

[fol. 521] The Court: Do you want to ask Mr. Eckert any questions?

Mr. Kelley: No, I do not have any to ask him.

The Court: What is it you wish to make for the record?

MOTION TO DIRECT GOVERNMENT TO PRODUCE ANY STATEMENTS NOT ALREADY PRODUCED RENEWED AND RULING THEREON

Mr. Witt: Your Honor, just to make our record in the wind-up of the in-Chambers interrogation of the witness on the question arising under Section 3500 we renew our motion that the Court direct the prosecution under Section 3500 to produce any statements not already produced pursuant to the original order of the Court in the possession of the Government bearing on the subject matter of this man's testimony whether it is in the possession of the FBI

or attorneys in the Department of Justice, attorneys of the Government elsewhere whether in the possession of Committees of Congress, whether in the possession of the Immigration and Naturalization Service, and whether in the possession of any department, agency or bureau of the Executive Branch of the Government.

The Court: Where is there anything in this evidence that we have heard here that you have offered that would establish the existence of anything that would come within the realm of 3500?

Mr. Witt: What we have established is that this man over the years has talked again and again and again to Government agents of one kind or another the way we define Government agents. It is clear from this man's answers although, of course, the prosecution won't agree and perhaps your Honor won't, that he is being evasive as to many of these talks he had with these Government agents. For example, it is simply incredible to ask anybody to believe that Messrs. Vincent and Crandall would go to Grosse Pointe, as I assume your Honor apparently understands, [fol. 522] from Washington to interview this man at his home about the testimony he was to give in this trial without there being some document which eventuated from that incident.

Now, if we are wrong about that, Messrs. Vincent and Crandall are here, they are colleagues of Mr. Kelley of the prosecution of this case, and they can give us the answer to that without being reticent about something we are entitled to know, and, if they give us the answer, they are members of the Bar and attorneys employed by the Department of Justice, that will be the answer. If the answer is, "No, there is nothing in writing," that is one thing. But if the answer is "yes" we want to know if anything in writing that came from that interview in Grosse Pointe was delivered to your Honor in connection with our demand under Section 3500.

Finally, just to reiterate our position on the remaining issue, we still say that not all documents in the possession of the attorneys are considered work product even if it can be assumed that everything called work product is subject to production.

The Court: I think you are talking in generalities. What I want to know, where is there anything established in this evidence from this witness, the existence of anything that would come within the definition of 3500 as being something that the Government would be obliged to produce?

Mr. Kelley: Well, in this statement for the record in addition to the fact that there is no showing that there is anything, that to my knowledge, and I have been assured that there is no further material that is producible, I think Mr. Vincent can make a statement as to this specific incident at Grosse Pointe if that would make Mr. Witt happy. Paul, you can state whether or not there was a statement made up there or any written statement of any kind taken or adopted.

Mr. Vincent: I think I can make such a statement, Mr. Kelley, if your Honor please. I do not think it was established, number one, in the testimony of this witness that this was an interview pertaining to this case in the respect which Mr. Witt is talking about. Number two, I can state to your Honor that I did not take any notes of any kind during the conversation in Grosse Pointe with this witness.

[fol. 523] Mr. Kelley: Can you state as to Mr. Crandall?

Mr. Vincent: I can state that, yes.

Mr. Witt: Can I ask a further question of Mr. Kelley?

The Court: Yes.

Mr. Witt: A further question about that interview at Grosse Pointe, whether there is anything in the files of the Department of Justice, I am referring to written material, based on the chit-chat that Messrs. Vincent and Crandall had with Eckert in Grosse Pointe.

Mr. Kelley: No, the categorical answer I gave you before would cover that. I mean I am making it specifically applicable to this Grosse Pointe incident.

Mr. Witt: What is categorical, that there is nothing in the files?

Mr. Kelley: That there is nothing further than what has been produced to the Court.

Mr. Witt: In connection with this particular incident?

Mr. Kelley: Specifically applying that statement to the Grosse Pointe contact.

Mr. Witt: Then, our next question, taking them chronologically, is whether Mr. Kelley can make a statement as to any documents in possession of the Senate Internal Security Subcommittee which eventuated from the interview or interviews this man had.

The Court: I haven't heard anything that would even suggest it. He can say what he wants to. But there is no prima facie showing here that there was ever anything that would approach a statement involved in that proceeding at all. If you want to say something about it, you may.

Mr. Kelley: I think there is no foundation for it, and, as I stated at the beginning, that is a different branch of Government. The history of the Act, 3500, clearly indicates that it wasn't contemplated that anything that they might [fol. 524] have would be covered, and under the circumstances in this case where they have had the public testimony of this man on many occasions they have they claim many, many inconsistencies, it seems to me anything further, if it existed, would be cumulative.

The Court: I am not so much concerned about that, but the point I am trying to make is this: There has to be some showing made, at least some kind of a prima facie showing or something that approaches that that there is in existence something that would come within 3500. If then it develops there is, then would come the problem of ascertaining who had it and how it could be gotten. What I am asking them, what in the record indicates that there is anything in existence anywhere before any agency of the Government, any matter that would come within 3500?

Mr. Witt: I do not know how much of a record you want us to build on this, it is unfortunate we have to get into these problems under the law, but here we are, but here is the point on that, your Honor, addressing myself to your point, not to Mr. Kelley's legal argument as to the definition of agents of the Government under Section 3500: Eckert testified that he talked to Connors on at least one occasion, if I can recollect, he was not sure whether there was another investigator or not. I am familiar with Eckert's testimony before the McCarran Committee in Salt Lake City in October of 1952. As I recall Eckert's testimony in Chambers about his talk or talks with Connors, he said that

he gave him a copy of his, Eckert's statement before the CIO. Now, if you examine Eckert's testimony before Senator McCarran's subcommittee, you will find that Eckert testified about a good many other matters relating to Travis and Mine-Mill which were not contained in his statement before the CIO, and, your Honor, it is our position that this testimony of this man is incredible. Maybe he doesn't know what Connors did. It isn't possible to believe that Connors interrogated him in a public hearing, and it was Connors who did it, about not only matters contained in the CIO statement but about other matters, without Connors having some written document in his possession or in front of him during the public hearings based on his talk or talks with Eckert.

The Court: Of course, I have nothing before me but the [fol. 525] testimony of this witness, and I mean your conclusions call for an absolute disregard of that testimony and an assumption on absolutely nothing but what you might say would be the basis of your notion that no interrogator or lawyer or whatever these gentlemen's capacity is would embark on an examination without having more information. That I think is a pure whole-cloth assumption.

Secondly, even if the talk was broader than what might be suggested here by this witness conversations with Government agents or discussions with them don't come within the category of 3500. I mean there could be a dozen talks and still nothing arise. There has to be shown we all agree I think something that meets the definition of the statute with respect to statements. I see nothing in this testimony at all to indicate the existence of anything that would come within the statute. It is true I think in two or three instances the witness testified that some attorney just prior to the case being tried in which they were involved had made some notes for the attorney's own benefit presumably in examining the witness. He testified expressly and specifically with respect to each of those occasions and with respect to each of these interviews that there was no transcription of the notes made by the attorney where they were made or no reducing of them to writing and submitting them to him for his approval or anything of that sort. It seems very clear to me that in these isolated instances

in which the attorneys made notes as Mr. Kelley did here in preparation for this trial and possibly for some of these other matters do not come within the statute at all. I do not think we can determine the question Mr. Deikman has been talking about, when a statement might be considered a work product and when it might not be, because there is nothing in the form of a statement here that would come in that category. If you can point out anything in the evidence that would indicate otherwise, I would be glad to listen to you. That is my view of the thing as I see it right now.

Mr. Witt: I have two things to take up with your Honor. Number one, on your Honor's comment on what I said about Mr. Connors and the hearing in Salt Lake City before the Senator McCarran Subcommittee, just incidentally in passing, your Honor, it is very clear from the witness' testimony that Connors was not an attorney. He was an investigator for the Committee. If there is any doubt about that, I have the hearings—

The Court: That is the reason I wasn't sure. Sometimes they are attorneys. Sometimes members of the FBI are attorneys. I didn't know.

[fol. 526] Mr. Witt: In this connection as far as this particular job was concerned, Mr. Connors' job with that Subcommittee was investigator, and I have the hearings in the Courtroom, these particular hearings where the names of the Committee and the staff are listed, and Mr. Connors is listed as an investigator. If he happens to be an attorney, that is immaterial in this connection. When he was interviewing Eckert he was interviewing not as an attorney for the Committee but an investigator. But getting to the main point, if your Honor has doubt about what I said about the scope of Eckert's testimony before the McCarran Subcommittee, specifically my statement that that testimony went far beyond Eckert's statement before the CIO, then, our only alternative will be to make Eckert's testimony before the McCarran Subcommittee a part of the record in support of this motion I have here.

The Court: I do not think that would be helpful at all, because it seems to me the weakness in your position here is this: that you are asking the Court to assume from the

facts that the witness testified to something, say, beyond what was included in the CIO hearing, that, therefore, it follows that something or sometime along the line by someone, and an investigator or someone else, that he gave some statements that would come within the meaning of 3500 and I do not think any such assumption is justified at all any more than it would be any basis for assumption in an ordinary trial when a witness is interrogated. There is no assumption that I know of that at some place along the line he made a signed statement or his testimony was transcribed in advance of the trial and approved by him or someone else prepared a statement for him and came around and had him approve it ahead of the trial.

Mr. Witt: We can clear that problem up with respect to all of these agents with one suggestion I think aside from one remaining incidental problem. Let me say first that, if I have been following your Honor, I do not quite agree with your Honor's interpretation of the definition of "statement" in 3500. In addition to what your Honor has just said in summarizing that 3500 defines a statement as something which is in writing embodying what the witness said substantially verbatim, I think that is the phrase.

Mr. Kelley: It is a statement made by, is what it says.

[fol. 527] Mr. Witt: We say a statement made by the witness to an agent of the Government, passing the definition of agent for the moment, where the agent makes notes and then writes that up for his own use in connection with the trial or hearing, we say that comes within the definition of "statement".

Now, just to wind up our position on it, all this can be very easily settled again by a statement from the prosecution as to whether or not they have checked with the Senate Internal Security Subcommittee, whether they have checked with respect to this man's own testimony in Chambers about these occasions when attorneys did make notes. I wasn't here all the time, but I am informed that he said that with respect to his talk or talks with Mr. Mitchell before the first trial of Travis and he said it with respect to his talks with Mr. Broome before he testified in the SACB proceeding. We may be overlooking one, but it doesn't matter. A suggestion is we hear from the

prosecution on this. They know what the documents are if there are documents.

The Court: They would not come within the category of this statute is what I am talking about, and this amounts to the same thing as if you said to them without introducing any evidence, "we wish you to make inquiries of this agency and that agency." You made a motion for them to produce everything they had under 3500, and they have produced. Then, if you think they haven't produced; if you think there is something in existence that you are entitled to that they haven't produced, why, as I understand the law, it is up to you to show what those items are, and, if you make a showing sufficient to convince the Court that there are such items in existence, then, of course, the inquiry can be pursued further. I am positive in my own mind that this proof doesn't approach that. So, the record can show this motion denied.

Mr. Deikman: Just one more word on that. I think there was one thing left out by Mr. Witt, and that was the correspondence that the witness testified he turned over to Government attorneys.

The Court: But that would come in an entirely different category I would think. If they were used as exhibits, the exhibits are available by application to these courts in which they were filed. If it is correspondence, I think it would come under the category of subpoena duces tecum, wouldn't it?

[fol. 528] Mr. Kelley: I would think so, your Honor.

The Court: I don't think there is anything in that that would require the Government to start chasing around about correspondence. It wasn't shown they were statements. It was merely correspondence. Then, furthermore, as I say, if they were produced at the trial, Mr. Witt has been at practically every one of these trials, he knows what has been produced in the way of documentary evidence without some further identification. It is not even shown here in the custody of the Government as a matter of fact. I don't know where they are.

Mr. Deikman: Eckert said he gave exhibits, but he also said he gave correspondence. He did not remember whether it was from him to Travis or any other person. Nothing could be more clearly within the statement of 3500 than a letter on the part of the witness related to the subject matter signed by himself which he turned over to the Government. There is something in the record which supports the idea that there is such correspondence or they (sic) may be such correspondence.

Mr. Kelley: I think he stated he turned over correspondence between Mine-Mill and himself and possibly the Die Casting Division of Mine-Mill, between Travis and Mine-Mill or Travis and Eckert, all of which would be available, the copies or the originals would be with the defendant or Mine-Mill.

Mr. Witt: That is too ridiculous for words. We are shooting in the dark. This man says he turned over all kinds of correspondence over a period of years, all kinds of minutes and convention proceedings and all the rest of it, and instead of the prosecution making a frank statement of what they have or disclosing it to the Court, that is all we are asking, so the Court can see whether they come within Section 3500, we are told without knowing just what this man turned over except vague freightloads of material that it is all in our possession.

The Court: That is just the trouble with the thing, is the vagueness of the showing. Does the Government know of any correspondence or anything?

Mr. Kelley: Well, on that, your Honor, I cannot speak. I know nothing about any letters or anything like that.

[fol. 529] The Court: I doubt if it would come within this category at all in the absence of some other showing.

Mr. Kelley: There is no indication that these letters contained any statements.

The Court: I don't think it would come in this category at all, but I don't know, unless there is some showing about what it was or something of that sort.

Mr. Witt: We have had our say, if the Court please.

The Court: We had better proceed.

Mr. Witt: There is this one point about the Grand Jury issue that I referred to this morning, your Honor, that we have to clear up before we go into open court. We didn't make that too clear this morning. We didn't have enough time. We have already made a record in support of this issue which we will argue at the appropriate time which I take it is after Eckert has finished with his cross examination, and it is in support of this motion for production of the Grand Jury testimony, but the one remaining problem, your Honor, is this: There are some incidental aspects of his testimony which we think could appropriately be brought out before the Jury, but they are incidental, and I think they are burdensome before the Jury, and we don't care to make our point with respect to those problems before the Jury even though we think they would help us. Because of the time and effort consumed before the Jury we do not think it would be worth it But we think they are points which we are entitled to bring out before your Honor before your Honor rules on our Grand Jury motion. So, we will do it either way if your Honor and the prosecution wants us to indicate.

The Court: I thought yesterday you said that this question relates to the Grand Jury which you intended to develop in here.

Mr. Witt: Yes.

The Court: That is what I think.

Mr. Kelley: Have you made your motion for the production?

[fol. 530] The Court: He did once.

Mr. Witt: We will renew it. I am making that to save my record.

The Court: Do you wish to make any other showing in here about you. Grand Jury business?

Mr. Witt: Yes, in open court. I can tell you what the points are if it will help Mr. Kelley to feel better. We will do it either way, but we insist we have to do it some way.

The Court: What do you think you can show?

Mr. Witt: There are additional items of testimony we think we can develop from this witness with respect to the four following people about whom I have already interrogated him to some degree: James Durkin, Jack Marcotti, Hugh Bryson, and Harold Sanderson.

The Court: You mean that he placed them in a meeting at some time and at another time didn't place them there, is that what you mean?

Mr. Witt: Yes, but the point is with respect to these four people we want to try to show why it is that at particular times he didn't place them in particular meetings and at other particular times he did.

The Court: Is that evidence or argument?

Mr. Witt: That is evidence through this witness. It won't take long I think.

The Court: We had better get him. But we had better go ahead and have the next installment of this.

Mr. Witt: That is what we prefer.

Mr. Kelley: We would like to conclude with this witness. The thing is there should be an order that we have to produce it, then they would want time to examine it or you would have to take time to examine it, and, if you found anything like that—

[fol. 531] Mr. Witt: We want to conclude in court on the Horowitz meeting.

The Court: They want to cross-examine further, but that has nothing to do with this.

Mr. Witt: We suggest we come back in Chambers on the Grand Jury motion.

The Court: When you get through with this witness, just asking you this informatively, is there any reason why you can't go ahead and then call your next witness and then we will recess, say, about 4:00 o'clock and then settle this thing, will that be all right?

Mr. Kelley: Well, the only thing I want to do, your Honor, this witness has been here since January 10 and it is an expense to the Government.

The Court: That will get it disposed of today. What I hate to do now is take another hour and have the Jury waiting here. I would rather recess at 4:00 o'clock. This examination will be rather brief I understand.

Mr. Witt: I think we can be done within ten minutes at the most if the prosecution won't harry us with objections. On these four people, if the prosecution will be good enough to cooperate, I do not think it will take longer than 15 minutes.

The Court: Let's figure it this way: We will recess at 4:00 o'clock, and then we can come in and cover this Grand Jury business in here.

Mr. Witt: With Eckert.

The Court: All right.

In Open Court

The Court: I understand that you wish to proceed further with your cross examination.

Mr. Witt: Yes, sir, on just one subject, if the Court [fol. 532] please, as I explained to the Court and the prosecution in Chambers.

KENNETH ECKERT, resumed the stand, and testified as follows:

Cross examination.

By Mr. Witt (Continued):

(Document marked Defendant's Exhibit G for identification.)

Q. Mr. Eckert, before we went to lunch I asked you some questions about when it was and how it was that you went to the St. Paul convention, and, if I remember one of your answers, you said you didn't recall whether you went there by plane, is that right?

A. That's right.

Q. Mr. Eckert, I show you Defendant's Exhibit G for identification and ask you whether you recognize what that is.

A. Yes, I think I do.

Q. Will you tell the ladies and gentlemen of the jury what that is.

A. It appears to be an expense account form of the Mine, Mill & Smelter Workers of the type used at that period.

Q. Is that particular one your own voucher for the last half of August of 1947 signed by you?

A. It appears to be.

Q. Do you see anything anywhere on that voucher which indicates that it has been doctored in any way?

A. Well, I don't know what the erasures mean there.

Mr. Witt: Will you read that answer?

(The reporter read the last answer.)

Q. All right, will you indicate to me what erasures you are referring to?

A. Well, here is one here.

Mr. Witt: Mr. Kelley, do you want to observe this? I am sorry, we will try to make it clear to the Jury.

A. One here and here, both places.

Mr. Witt: May it be stipulated, I think we can do it more quickly that way with Mr. Kelley's agreement, may it be stipulated when the witness was referring to erasures he was pointing to a section on the bottom which is apparently the front of this form where the witness's signature appears where there is a recapitulation of his expenses for that period?

[fol. 533] Mr. Kelley: That is correct.

Q. Now, Mr. Eckert, I direct your attention particularly to the date of the 18th, and that would be the 18th of August, 1947, as the witness has testified this is for the second half of August, '47, I direct your attention particularly to the 18th and ask you whether that doesn't show that on the 18th of August, 1947, you traveled from Cleveland to Chicago by plane.

A. Yes, I think it indicates that.

Q. All right, then, I will ask you to tell the Jury whether your own entry there on the 19th, the next day, doesn't show that you traveled from Chicago to St. Paul by plane.

A. The entry shows I traveled from Chicago to St. Paul on that day by plane I believe.

Q. All right, that was on the 19th of August, is that right, Mr. Eckert.

A. Yes, I think that is what it said there.

Q. And I think you testified this morning that you attended the Board meeting in St. Paul which began on the 20th of August, is that right?

A. To the best of my recollection, yes.

Q. Do you want to look at that exhibit again, the exhibit of the Board minutes, Defendant's Exhibit F for identification?

A. Well, this document shows me present at the Board meeting, yes.

Q. Beginning on the 20th of August?

A. Yes.

Q. Now then, Mr. Eckert, I will ask you whether you can now fix more exactly the date of the Horowitz meeting, or perhaps to make my question more precise so that we won't misunderstand each other, I will now ask you to tell us whether the Horowitz meeting about which you testified in this trial in Chicago took place on August 18 or August 19.

A. I don't know.

Q. And this does not serve to refresh your recollection, this voucher of yours dated August 31, does it?

A. My recollection is that the meeting took place shortly before leaving for St. Paul.

Q. Well, I will ask you now when you say shortly before leaving for St. Paul you mean on August 19?

A. No, I don't recall what date it was.

Q. You mean August 18?

A. I don't recall.

Q. You are not willing to—

The Court: I think you had better change that "willing" to "able".

[fol. 534] Mr. Witt: Yes. I was having difficulty finding other words in the English language. You want to put the question, your Honor?

The Court: No, only I do not like your "willing".

Mr. Witt: I would be pleased if you would.

The Court: I was going to suggest "able".

Mr. Witt: Thank you very much. I think that is very helpful.

Q. Mr. Eckert, are you able now to tell the Jury whether the Horowitz meeting took place on August 18, 19 or whether it took place on an earlier date?

Mr. Vincent: If your Honor please, it has been asked and answered at least three times.

The Court: No, I think he can answer the question.

A. I am unable to recollect the day that it took place.

Q. But it would still be your testimony that, as I understood it on direct examination and under my cross examination this morning, that that Horowitz meeting took place a few days before the convention?

A. Well, it was either a few days before the convention or before this Board meeting. The Board meeting and convention run together, and they meet, the Board meets before the convention and sometimes during the convention. I am referring to a few days before the annual convention and meeting in St. Paul.

Q. If I followed you, and, of course, you will correct me if I do you an injustice, you now have testified a little bit differently than you did when you first testified about this on direct, and let me refer to your testimony on this precise question as to just when the Horowitz meeting took place, when you testified on direct last week, page 150: "Question: When or how long prior to the St. Paul convention did this meeting occur? Answer: Well, it was just prior to the convention, I believe, not more than a few days before the convention opened." Do I understand you to be saying now that you want to change that to a few days before either the [fol. 535] convention opened on the 25th of August or a few days before the Board meeting began on the 20th of August?

A. Well, not unless you want to separate the convention and the Board meeting.

Q. All right, Mr. Eckert, I will ask you to look at Defendant's Exhibit G for identification again and ask you whether it is not true that that shows that on August 16 and 17 you were in Cleveland which, of course, is all 1947. I won't keep repeating that.

A. Yes, that's correct.

(Document marked Defendant's Exhibit H for identification.)

Q. Mr. Eckert, I now show you Defendant's Exhibit H for identification and ask you to look at this and ask you to tell us whether that is not the voucher you submitted to the International Office of Mine-Mill for the period ending August 15, 1947.

A. It purports to be a copy of it.

Q. A copy of your voucher?

A. This is a carbon copy, a carbon copy of something.

Q. Yes. Well, I will ask you to look at that signature. Is that your signature at the bottom of that?

A. Well, it is a carbon copy of what appears to be my signature.

Q. All right. Using that carbon copy of what appears to be a voucher for that period and a carbon copy of what appears to be your signature I will ask you to look at that carbon copy and examine where you were during that period and tell us whether that carbon copy shows at any time during the first half of August, 1947, you were in Chicago, Illinois.

A. Well, this document does not show me as being there, no.

Q. Now, finally, Mr. Eckert, I will ask you again whether it would be your present testimony that you attended the Horowitz meeting in Chicago on August 18 or August 19, 1947.

A. No, possibly that deduction could be made from those documents, but my recollection is still what it was before. I am not able to recall the exact days the meetings were held.

Mr. Witt: That completes the cross examination subject to our discussion in Chambers with respect to interrogating this man further on the issue relating to Grand Jury testimony.

The Court: All right.

[fol. 536] Mr. Kelley: The Government has no redirect, your Honor.

The Court: You may step down, Mr. Eckert. You will remain in attendance until you are formally excused, and you can call your next witness.

(Discussion at the Bench.)

In Open Court

The Court: Ladies and gentlemen of the Jury, as you have just observed, they have completed the cross examination of the witness on the stand, and the Government had no redirect subject to one reservation, one matter that is still under consideration that might involve further cross examination. But the normal step would be next for the Government to proceed with their next witness. Counsel just advised me that due to a variety of circumstances that it would break up the continuity of the testimony to attempt to proceed here this afternooon with the Government's testimony.

I might say that we previously had agreed that we would recess at 4:00 o'clock today, and on that basis the Government advises it would break up the continuity of their testimony to call a witness now for an hour or so and then start on another witness tomorrow and then have to continue with the examination of this first witness for some future time. So, I think we will just recess now until tomorrow morning at counsel's suggestion.

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In Chambers

The Court: You may proceed.

Mr. Witt: All right, your Honor. In answer to the question you asked a few minutes ago, as I think I have indicated, we want to interrogate the witness further about four people whom he mentioned in his testimony, so, my proposal is that I go ahead with that and take each of them in order.

The Court: You may proceed.

Mr. Witt: May I make a statement as to this so we do not [fol. 537] spend time getting the continuity back from the witness in terms of his testimony in open court? First, with respect to James Durkin I think the record will show that

yesterday I asked him about his testimony in the different proceedings over the years about James Durkin's presence at this meeting in New York early in '48 attended by Communist Party leaders and trade union leaders, and the record yesterday will show that the witness Eckert mentioned the name of James Durkin as one of those in attendance for the first time when the witness Eckert testified in 1957 before the SACB.

Mr. Vincent: Excuse me, did you say the record would show that you had interrogated the witness over a period of years in regard to James Durkin?

Mr. Witt: No, I don't think I intended to say that. Did I say that?

Mr. Vincent: That is the way I understood it.

Mr. Witt: Without wasting time going over the record I certainly didn't intend to say that. I never interrogated him.

The Court: He implied he interrogated the witness for a number of years when he was on the stand.

Mr. Witt: Maybe I garbled it. If I did not make myself clear to Mr. Vincent—

Mr. Kelley: Before you start over let me make an objection to going into anything in regard to James Durkin for the reason that his name was not mentioned on the direct examination of the witness, as I recall, and the only thing that could be accomplished would be an attempt to impeach his testimony in other proceedings and his testimony on cross examination in this proceeding.

Mr. Witt: No, sir. Mr. Kelley also then didn't understand me.

The Court: I am wondering what the province of this discussion is. Whatever the record shows it shows.

[fol. 538] Mr. Witt: Suppose we go ahead.

The Court: Yes, proceed.

KENNETH ECKERT, a witness called by the Government, having been formerly sworn, testified as follows:

Examination.

By Mr. Witt:

Q. Mr. Eckert, did you say in your testimony before the SACB in 1957 that James Durkin attended the meeting in New York early in 1948?

Mr. Kelley: Now, we object, your Honor.

The Court: This brings in the Government's objection. If this man's name, Durkin, is it?

Mr. Witt: James Durkin.

The Court: —is not mentioned in this trial, how are we concerned with the testimony here? Was it mentioned in this trial here?

Mr. Witt: No, it wasn't. Even so I think we are entitled to bring it out in order to make a record on the motion for Grand Jury testimony, and let me state why we think so if you will.

The Court: On what theory?

Mr. Witt: We want to show aside from showing inconsistencies and contradictions in this man's testimony which we have already shown in open court, which we will try to summarize in connection with this Grand Jury point that we are considering, an additional reason why we are entitled to his Grand Jury testimony. When I say we are entitled to it, of course, I mean in the context I have already stated, either produced to yourself first or produced directly to us, because his testimony on this Durkin question aside from other questions which we will come to later will show that this man contrives his testimony from occasion to occasion depending upon the circumstances, depending upon what he thinks the Government wants from him, and I am not suggesting that the Government necessarily tells him, and in terms of what he thinks will do the greatest injury to Travis, Mine-Mill or the people affiliated [fol. 539] or associated with Mine-Mill. As far as this Durkin thing is concerned—

The Court: To save a lot of time I think I will overrule the objection, and you can go ahead with the testimony. You can answer that question. Do you remember what it was?

Mr. Witt: I will ask it again, and I think we will save time.

Q. The question was, Mr. Eckert, whether in your testimony before the SACB you testified that James Durkin attended the meeting in New York early in '48 of Communist Party leaders and trade union leaders.

A. I recall your having shown me the transcript which I read yesterday and stated that apparently was my testimony. I don't recall what the testimony was.

Q. Do you recall with respect to the testimony I showed you yesterday before the SACB that before 1957 when you testified before SACB that in other proceedings that on those other occasions when you testified about that meeting in New York in 1948 you did not testify that Durkin was present, do you remember that yesterday?

A. What other occasions?

Q. You testified about the meeting in New York in 1948 on other occasions.

The Court: What he means is when, what other occasions.

Mr. Witt: Other occasions when he testified. We went through it yesterday. I want to save time.

Mr. Kelley: As long as we have been through it why do we go through it again?

Mr. Witt: I am making the record on the other point.

The Court: If it is in the record already, there is no use of going over it again. I understood what you are going to do is that we are considering all the testimony that was given in the courtroom and you can refer to that in your argument and that this was something in addition to what has been developed in the courtroom.

Mr. Witt: All right.

Q. All right, Mr. Eckert, you testified in the hearing in [fol. 540] Chambers today, perhaps also yesterday and also in open court that you testified before the Grand Jury

in this District Court in 1956. I will ask you whether in your appearance before the Grand Jury on that occasion, that is, the second occasion on which you testified before a Grand Jury in this Court, on that occasion you gave testimony about James Durkin.

Mr. Kelley: The Government objects to that for two reasons: First, there is no foundation for asking it. He is inquiring into a matter that relates to an indictment that was returned and which is pending in this Court on a case in which Mr. Witt is also counsel, and it is in the nature of a fishing expedition.

The Court: I think I will sustain the objection.

Mr. Witt: All right, sir. I don't want to argue these points. I want to make my record. Okay, I will go to my next question.

Q. Mr. Eckert, before you testified in Washington before the SACB in 1957 did you learn or had you been told that James Durkin had been indicted in this Court in November of 1956?

Mr. Vincent: The Government objects to that question, your Honor.

The Court: What is the purpose?

Mr. Witt: The purpose of this is to show—

The Court: I think I will overrule the objection and he can answer if he knew, and we will see what that brings. Can you answer that?

A. I don't know whether I did or not.

Q. Mr. Eckert, were you told or did you hear that there was an indictment against 14 people handed down by a grand jury in this court in November, 1856, (sic) those 14 people either being presently connected with Mine-Mill or having been connected with Mine-Mill in the past?

Mr. Kelley: The Government objects to that.

The Court: I will sustain the objection to that. I can't [fol. 541] see the purpose. Ask him a specific name if there is any significance, but what is the point about whether he knew the fact there was an indictment in this court against 14 people without knowing anything more about it?

Mr. Witt: This is preliminary, your Honor.

Mr. Kelley: Let's try the case. Let's not lay the foundation for your next lawsuit. Let's get this out of the way.

Mr. Witt: The Government wants to try one case one way with one set of testimony and another case another way with another set of testimony. We do not think this is the principle of our system of justice.

The Court: You can ask him about specific people. He already answered about Mr. Durkin.

Mr. Witt: I will go on to the next question. I take it your Honor sustained the objection.

The Court: I do on the basis of the form of the question.

Q. Mr. Eckert, did you in any connection, not only in connection with the meeting in New York early in 1948, ever mention the name of James Durkin when you testified in an open court, in an open hearing before your appearance in Washington in 1957 in the SACB hearing?

A. I don't recall whether I did or not.

Q. Mr. Eckert, did you name James Durkin in your testimony before the SACB as a member of the Communist Party to your knowledge and as a person who attended that meeting in New York in early 1948 in order to prejudice Mr. Durkin because you had heard about or been told about the indictment in this court against 14 people including Durkin in November of 1956?

Mr. Kelley: The Government objects to that.

The Court: I think I will let him answer that.

Mr. Kelley: Your Honor, it is strictly an argumentative question. Did you get the full import of the question?

[fol. 542] The Court: I think I did. I think he simply asked him if he mentioned his name there because he heard of this indictment here and mentioned it with the idea of prejudicing Mr. Durkin, that is what the question was.

Mr. Kelley: That would not have any bearing on whether they were entitled to the grand jury minutes.

The Court: He seems to think he has some law that might be a factor. I think you can answer, Mr. Eckert.

A. After I left the Mine, Mill and Smelter Workers I attempted to adopt a code of decency and abandon the tac-

ties of the Communist Party that I learned from my associates in the Party and in Mine-Mill.

Q. There is no jury here, Mr. Eckert, so, you are not getting anywheres with that. Now that you made that little speech will you answer the question?

Mr. Kelley: That is a fair answer to the question.

The Court: I think you can answer whether you did it with the idea of prejudicing him was what the question was.

A. Well, I certainly did not.

Q. Mr. Eckert, the record of your testimony in this trial shows that when you testified about the meeting at Henry Horowitz's which did or did not take place in Chicago in August, 1947, when you testified about that in the Jencks case and you named those present you didn't name Jack Marcotti, when you testified about that meeting on the first trial against Travis in this court and you named the people present you did not name Jack Marcotti, but that when you testified in 1957 before the SACB about that meeting at Henry Horowitz's, which did or did not take place in August, 1947, and when you named the people present you named Jack Marcotti as one of those present. Therefore, Mr. Eckert in your capacity now as a teller of the truth I will ask you whether the same question about Jack Marcotti that I asked you about James Durkin, did you finger Jack Marcotti for the first time in 1957 because you knew or had heard that he was one of the 14 indicted in this court in November, 1956?

Mr. Kelley: The Government objects to counsel badgering this witness. It is wholly uncalled for and improper type of proceeding even in Chambers.

[fol. 543] The Court: Well, I think you can answer the question.

Mr. Crandall: Your Honor, may I interpose here? He has brought out the fact that the Horowitz meeting did or did not take place. Actually, I think the record is clear that it did take place, so, I think the question should be rephrased.

The Court: I am assuming that the factual recital is correct. If the witness doesn't agree with that, he doesn't

need to answer the question, but on the basis of the factual statement being correct the ultimate question is the same as this other one, whether he included Marcotti's name at this time to prejudice him and whether that action resulted from the fact the indictment had been returned here in this other case. That is about what the question is.

Mr. Witt: I didn't ask him about prejudice this time. I will rephrase it leaving out what Mr. Crandall objected to.

Mr. Kelley: This doesn't show any foundation laid.

The Court: They say they have some authority. You can restate your question.

Q. Mr. Eckert, since in connection with the Horowitz meeting you did not name Marcotti in the Jencks case when you testified in 1954 or in the first trial against Travis when you testified in 1955, and, however, you named him in 1957 when you testified before the SACB, I will ask you whether you named Jack Marcotti in connection with that meeting as one of those being present for the first time in open proceedings because you knew or had heard that Jack Marcotti was one of those that had been indicted in this court in November, 1956.

Mr. Crandall: I object to that.

Mr. Vincent: I object to that, your Honor.

Mr. Crandall: He is assuming that this is the first time that he has mentioned Jack Marcotti in any proceedings. I don't think there is a foundation for it.

Mr. Witt: In connection with the Horowitz meeting.

[fol. 544] Mr. Vincent: We don't know if the witness has a recollection of what he testified.

Mr. Crandall: You are assuming that is the first time in any proceeding.

Mr. Witt: In open proceedings.

The Court: I think you should rephrase the question and base it on what is in the record here.

Mr. Witt: I will re-ask the question.

Q. Without reference to his testimony in the Jencks case, in the first Travis trial, and the SACB. Do you understand it now, Mr. Eckert?

The Court: What is the question?

A. I am afraid I don't.

Q. Mr. Eckert, I will ask you, since the record in this case shows that you did not name Marcotti as one of those present in the Horowitz meeting when you testified in the Jencks case and you did not name him as one of those present at the Horowitz meeting when you testified about that in the first trial against Travis but that you finally did name him when you testified about the Horowitz meeting before the SACB in 1957, whether you named Marcotti as one of those present at the Horowitz meeting when you testified in 1957 because you knew or had heard that Jack Marcotti was one of the 14 indicted in this Court in 1956.

A. I didn't name Marcotti in any proceeding for the purpose of prejudicing Marcotti for any purpose.

Q. I didn't ask you about prejudice. I simply asked you, had you named him—

The Court: I think the answer is responsive.

Q. In connection with Marcotti do you have any explanation of why when you testified about the Horowitz meeting on your direct examination in this trial and named the people who were present you did not name Marcotti, you wanted to help him by omitting his name this time?

[fol. 545] Mr. Kelley: I think it has been asked and answered.

The Court: I do not know whether it has.

Mr. Witt: No, it hasn't.

The Court: I think he did answer it. I think he did answer it out here.

Mr. Witt: Not about Marcotti.

Mr. Kelley: It is the same.

Q. Is there any explanation as to why you didn't mention Marcotti this time as being present at the Horowitz meeting?

A. I didn't name Marcotti because his name didn't happen to occur to me at that time.

Q. Mr. Eckert, the record of the proceedings in this trial shows that in connection with at least one meeting

you named Harold Sanderson as being present when you had not named in connection—

The Court: I think that is all in the record, isn't it?

Mr. Witt: Perhaps your Honor is right. I am sorry I overlooked that.

The Court: I think that's right.

Mr. Witt: I think we went into that. I will withdraw the question I started to ask.

Q. Mr. Eckert, I asked you questions on cross examination yesterday afternoon about Hugh Bryson in connection as to whether or not you did or did not name him on different occasions as being present at the meeting in New York early in 1948. Do you recall that I examined you on that subject before the SACB?

A. I have some vague recollection. I am not sure whether you did or not.

Mr. Witt: Your Honor, I think we can save time probably if instead of asking him the same questions I asked him before the SACB we can just read these couple pages about Bryson which contain the point I want to bring out which wasn't brought out in open court which I think [fol. 546] is relevant on our motion in connection with grand jury testimony. Does your Honor want to look at the testimony first?

Mr. Kelley: This is not inconsistent with his testimony in this trial, is it?

Mr. Witt: I brought out the inconsistency in open court. This is from a different point of view. This is as to his motivation for naming Bryson as being present at that meeting.

The Court: The facts about Bryson were developed in the trial.

Mr. Witt: Yes, but this is different.

The Court: He has already testified whether he did or didn't mention it.

Mr. Witt: I am not going to go into that again. I don't want to repeat that. This testimony before the SACB I did not go into it in open court and it goes to the question as to his motivation for mentioning Bryson as being

present at that 1948 meeting in New York for the first time in the Gold case.

The Court: What is your question? Let's hear your question.

Mr. Witt: My proposal was instead of wasting time asking questions I can read these questions and answers from the SACB proceeding. Is that all right, Mr. Kelley?

Mr. Kelley: It is all right with me. I have a continuing objection to this whole line.

Mr. Witt: You can object at any point here. I am willing to let you, and his Honor will rule. You don't have that, your Honor. This is the SACB.

The Court: I thought you interrogated him about that yesterday. That is what I was trying to find out.

Mr. Witt: The question that precipitated him naming him for the first time in the Gold case, can I go ahead?

[fol. 547] The Court: Go ahead, yes.

Mr. Witt: "Question: I am not asking you that, but I will ask you whether in your testimony here you mentioned the name of Bryson, B-r-y-s-o-n. Answer: Hugh Bryson. Question: Yes. I am referring to Hugh Bryson. My question now is whether you mentioned Hugh Bryson's name in your testimony here in this room when you listed the names of the people who attended that meeting. Answer: I don't recall having mentioned his name. Question: You gave that testimony here this week and you say you don't recall whether you mentioned his name in your direct testimony about that meeting? Answer: I said I don't recall mentioning Hugh Bryson's name."

I think I can save time.

The Court: That is in the record yesterday.

Mr. Witt: But it will take more time to explain the continuity. If you will give me a few minutes to look at it, I think I can cut out some of the colloquy. All right, I am skipping some of the colloquy, questions and answers, rather, on page 1180, if the Court please and Mr. Kelley, and then at the bottom of page 1180: "Question: I will ask you, Mr. Eckert, whether you ever heard that Bryson was under indictment. Answer: I don't recall having read his name. Question: You haven't heard in recent years that Bryson was under indictment? Answer: I thought you

were referring to the Denver—" And the witness didn't finish the answer. "Question: No, you listen to my question. I wasn't referring to Denver at all. I am just asking you whether you recalled that Hugh Bryson has been indicted. Answer: I am listening, Mr. Witt. If you will be coherent I will understand you."

And then there is colloquy with the Bench on that. Then we can go down the page again. This is now page 1181. "Question: The question is whether you have heard in recent years that Hugh Bryson was indicted. Answer: Well, I can answer it this way, Mr. Witt: I have not heard of whether he was indicted, but the FBI did ask me if I would testify on one occasion. Question: And when was that? Answer: Well, to the best of my recollection that was two or three years ago. Question: And was that at or about the time you testified in the Gold case? Answer: Well, it could be. My recollection is not too exact [fol. 548] concerning it. Question: You remember your testimony or our stipulation that you testified in the Gold case in 1954. So that when you say the FBI talked to you about Bryson two or three years ago, then would that mean at about the time you testified in the Gold case? Answer: The best answer I can give is at one time they queried me whether I would be able to testify. To the best of my recollection it was two or three years ago. That is about as close as I could put it. Question: At the time you testified in the Gold case—"

The Court: What are we doing here?

Mr. Witt: I am finished with this last question and answer, and then we can discuss what we are doing. We can make our record, your Honor.

The Court: All right.

Mr. Witt: "At the time you testified in the Gold case, and when you talked to the FBI and to the prosecutors in Gold, did the FBI and prosecutors tell you at that time that Hugh Bryson was under indictment? Answer: Not that I can recall." Now, that is what we want in, your Honor, and any time you are ready we will tell you what we are doing.

The Court: What is the question directed to this witness?

Mr. Witt: Well, the question is whether he recalls giving those answers to those questions before the SACB.

Mr. Kelley: Does that relate to his motivation?

The Court: What is the relevance?

Mr. Kelley: That is what you started out—

Mr. Witt: That is something else. Let's take one thing at a time. Your Honor proposes one thing, and the prosecution says something else. I get confused and tired.

Mr. Kelley: You started out to show that this contradicted his statement on motivation.

[fol. 549] Mr. Witt: I did not say that.

Mr. Kelley: You have got me confused.

Mr. Witt: I am sure I have. I will try to unconfuse you, Mr. Kelley, and state it as simply as I can. We want this evidence in this record on the grand jury issue not to show inconsistency about his naming or not naming Hugh Bryson. We have done what we thought we could do with that already in open court. We are producing this evidence in order to show that whether this man Eckert does or does not name a person at a particular time when he, Eckert, is under oath depends upon the circumstances of the particular time and particularly whether he can do the particular person the most damage and give the Government the most help at that particular time.

Mr. Vincent: Could we have Mr. Witt's legal reasons for his argument?

The Court: I am even narrowing that. This thing was gone into in the case in the courtroom yesterday. Here is Mr. Witt's question: "Question: All right, Mr. Eckert, in view of that answer I will ask you why it is that when you testified against Gold in 1954 you mentioned the name of Hugh Bryson, that when you testified against Travis the first time in 1955 you did not mention the name of Hugh Bryson, and why it is that when you testified about this meeting and who was present before the SACB in 1957 you did not mention the name of Hugh Bryson, and then when you testified about that meeting on direct examination last week here in connection with that meeting you said that Bryson was one of those present, will you explain why in view of your psychological explanation as to whom you know well and as to whom you don't know

well why you mentioned Bryson the first time in all of this testimony in the Gold case and then did not name him on the two subsequent occasions in the first Travis trial and before the SACB and then named him again on the second trial of Travis? Answer: Yes, sir. Question: All right. Answer: I think that the only thing I could add again is that for the reasons already stated at the particular time these questions are asked me my recollection is seldom—I am seldom asked to name all of them, but I name those that I can recall at the time. The name of Mr. Bryson which has been mentioned here in this last question, he falls in that category. I mentioned h name when that name occurred to me in the difficulty, great difficulty of recalling these events that occurred so many years ago." [fol. 550] Mr. Witt: Well, your Honor, just one word. I don't want to take much more time on this. As I have tried to explain, apparently I didn't make myself clear, following that examination that your Honor just referred to I decided not to ask the witness about whether the FBI had talked to him about Bryson as I did before the SACB for the reason I tried to make clear in Chambers today, I didn't want to burden the jury. In addition I saw no reason for prejudicing Hugh Bryson on this record in public, and I thought that was one of the points I would reserve for Chambers to complete our record in support of our motion.

The Court: What is it you want to ask now?

Mr. Witt: I have done it. The question is pending. I have read him his testimony on Hugh Bryson and whether the FBI talked to him about Hugh Bryson at about the time he, Eckert, testified in Gold. Now I am asking him whether having heard that testimony of his before the SACB he remembers he gave those answers to my questions, that is all then, we are done.

The Court: I guess there is no argument about the transcript, is there? I don't see the relevancy.

Mr. Vincent: It hasn't any relevancy in the proceeding.

The Court: You can answer it whatever way you wish.

Mr. Kelley: Is there a question pending?

The Court: He just propounded the question.

Mr. Kelley: I thought it was just testimony by Mr. Witt.

Mr. Witt: Mr. Kelley, that is not proper. I read from the SACB. Please—

Mr. Kelley: Your last statement.

The Court: The witness indicates he heard the question.

A. That appears to be the testimony I gave there in so far as I can recall.

[fol. 551] The Court: Is there anything further?

Mr. Witt: We pass the witness for the Court's determination or whatever you call it.

Mr. Kelley: Are you all through on this thing now?

Mr. Witt: We are all through making our evidentiary record in support of our motion on grand jury testimony.

Mr. Kelley: We have no questions in regard to this matter. Does the Court have any?

The Court: No, I haven't any.

Mr. Kelley: May it please the Court, we ask that the witness be excused subject only to being recalled.

The Court: What he had better do is stay around here until this question is decided, and then you can tell him.

Mr. Kelley: If we have to produce anything which they use on further cross examination. I suppose that is the object.

Mr. Witt: It certainly is.

The Court: You can wait. You are excused now. We will have a 15-minute recess.

ARGUMENTS ON MOTION FOR PRODUCTION OF GRAND JURY RECORDS AND RULING THEREON

The Court: You may proceed.

Mr. Witt: All right, your Honor, we want to try to make our point as concise as possible and not burden your Honor with lengthy argument, and your Honor may have questions. We think under the cases that our position for the production of this witness's Grand Jury testimony on the several occasions either to the defense directly or at least to your Honor first is justified on this record for the following reasons: One, we think we have successfully shown in our examination of this man in open court, our cross examination of him that there is probably not a

single occasion over the years on which he has testified in open court or in open proceedings of which we have a [fol. 552] transcript, there is probably not a single incident in which he has, about which he has testified in this trial on direct examination about which he has been consistent on two or more occasions when he has testified publicly. We think that goes for every so-called Communist Party meeting he testified to here on direct examination.

We have shown that when he testified on every one of those in other proceedings he has never been consistent either with his testimony on direct here, his testimony in the first trial or his testimony elsewhere. That is our first major argument.

Our second, your Honor, is this witness's palpable obvious extensive effort to avoid giving honest testimony which he does remember by saying continually on cross examination whenever a vital issue is approached, and in the course of his examination in Chambers on the other issues, of saying continuously that he doesn't remember even if the question deals with a matter which any normal person with normal intelligence would obviously remember, and I am not going to go over the details, because I said we do not want to make this argument too extensive, but just one illustration of that that happened in open court in order to emphasize our point: In open court yesterday afternoon I asked him about his talks, if he had any, with the FBI about Chase Powers, and he didn't remember, and then we showed that we had in our possession as a result of your Honor's order a document which showed that he had talked to the FBI about Chase Powers in January, 1956.

Here is a man who purports to remember conversations, at least the substance of them, which took place 16 years ago, 1942, and doesn't remember that he talked to the FBI about Chase Powers in Detroit I think it was in January, 1956. I stop on that one particularly, your Honor, because you will recall that the last paragraph of that document expresses the witness's feelings about testifying, and obviously an important matter. Of course, the record shows that despite that statement he made to the FBI in Jan-

uary, 1956, he has subsequently testified before the SACB on this trial, but in any event I am referring to that last paragraph to emphasize the point that an honest witness could scarcely have forgotten that occasion when he talked to the FBI about Chase Powers. I won't go on to the dozens and dozens and scores and scores of other similar situations that we could cull from this record without any difficulty.

[fol. 553] In the third place, there can't be the slightest question, there might be a question in the minds of the jurors, because they haven't heard it all, but I do not think there should be with all due respect the slightest question in your Honor's mind about this man's pathological hatred and prejudice against Mine-Mill, against the defendant, and against Communists. I refer to the fact that there might be some doubt about that demonstration in open court, because his attitude in Chambers merely gilded the lily for us as illustrated by his little speech this afternoon attacking Communists. Now, we are not saying that this man cannot hate Communists. He can hate them all he likes. What we are saying is that his hatred is so great and we think so pathological as to disqualify him as a witness against a man who he has been saying was a member of the Communist Party. So that we say this man is psychologically disabled from giving honest and truthful testimony against anybody who in his opinion is a Communist or was a Communist and hasn't pursued the course of life that he, himself, has pursued since 1948. That is the third point. Again, I won't try to document that except one or two individual illustrations.

In open court when I asked him who John Williamson was aside from the fact he horsed around in his usual effort to divert my cross examination he said that Williamson was a dope, Williamson being the man he described as the National Trade Union Secretary of the Communist Party. An illustration along the same lines and for the same reasons to divert me and expressing his hatred and contempt for the defendant was his statement that he had told Mr. DeCook that Travis was getting fat. Along the same lines is his nonsense in open court, again, not only expressing his pathological feeling but in this connection

even more attempting to divert my cross examination and make it more difficult, his references to the "doctoring" of the copy of the minutes of the February, 1946, Board meeting, when the record shows, and there can't be any doubt about it, the prosecution cannot dispute it, that this man has been identifying those documents since 1950 to our knowledge and according to his own testimony has been giving copies of those same documents including that particular one to Government agents right along.

Now, our next major point although it is really a subdivision of this last one is that the record shows that this man is ready to cooperate with the prosecution whenever [fol. 554] he knows what the prosecution wants or whenever he thinks he knows what they want as illustrated, as we tried to illustrate in the cases of Durkin, Marcotti, Sanderson, and Bryson. Along the same lines in an effort to build himself up and to help the prosecution with juries is his inconsistent testimony about the year when he joined the Communist Party, and, if I were to pick out, your Honor, any items of testimony which were the touchstone to the kind of character this is and what he is doing on the witness stand in these proceedings I would pick that out for this reason, your Honor, that will indicate to you why I use strong language about him: You will recall, your Honor, that in the statement he made to the FBI, I believe this is the one in his own handwriting, the only one in his own handwriting of which we have a copy, in 1951 he told the FBI that he had joined the Communist Party in the early part of 1932. Now, I emphasize the words "early part", your Honor, because that means that the man in this statement to the FBI was being exact. He didn't give the kind of answer he gives on the witness stand all the time—"It was around that period," "a few days before", "I am not sure", "it was this year" or "that year." He didn't say that in this report the way he said it on the witness stand about the organization of the Steering Committee, either late '45 or early '46. He didn't qualify the statement to the FBI in 1951. He said it was the early part of 1932.

We showed that when he testified on the first trial about that matter against Travis in 1955, several years after he

had made the statement to the FBI on direct examination he said 1931 instead of the early part of 1932. But the worst thing of all, your Honor, and the conclusion I am trying to draw is inescapable, when he was cross-examined about that item by Mr. Menin on the first trial he again qualified even his answer on direct examination when he said 1931, to say, "Well, it might have been 1930." He was giving this testimony in 1955, four years after he had told the FBI it was the early part of 1932.

Finally—I am sorry I am taking so much time on this point, but, as I say, I think it is a very strong one for us—I want to point out what I think the man does with that, what he thinks he is doing, he is following the pattern of the psychological, pathological liar. I am using the words advisedly and in their technical sense, in as technical sense as I can.

[fol. 555] The Court: You are not testifying as an alienist?

Mr. Witt: No, but I am testifying as a lawyer who has had to deal unfortunately with characters of this kind including Matusow in the Jencks case, and this item about when he joined the Communist Party in that sense is a classic as far as such pathological liars are concerned. Since in their own minds they are crusaders or agents of the Government anything goes, and they become very astute and very quick in being able to change their testimony especially on cross examination in order to help the case of the Government and help them put the dagger in deeper into the back of the defendant, and that is what this man did when Sam Menin cross-examined him on the first trial, and that is why I dwell on it without going into the rest of the record on this point.

Now, finally, and then I will make one short reference, I hope it will be short, to the Jencks case, your Honor will recall that I cross-examined the man yesterday about his testimony with respect to the presence of Graham Dolan at the Horowitz meeting and at the St. Paul convention in 1947 and then with respect to his testimony about Chase Powers' presence at the meeting of the Steering Committee before the February, 1946, Board meeting in the presence of Chase Powers at the February, 1946, Board meeting. Your

Honor, we hope that before this case is over and after we have put in our case we will prove to the satisfaction of any open-minded rational human being that Dolan was not with Mine-Mill in July and August, 1947, that the office of Director of Education was set up at the St. Paul convention, as I brought out through Eckert, that Dolan wasn't hired for that job until November, 1947, and in July and August of 1947 when the Mine-Mill office was still located in Chicago Graham Dolan was living in Denver editing a periodical which he continued to edit at least through August of 1947 and perhaps later.

With respect to Powers we hope to be able to show before this case is over that in the forepart of 1946, certainly on February 6, 1946, when that Board meeting began and for a period before that back into 1945, I don't have the exact dates yet, poor Chase Powers was in a sanitarium in the West because of his working in his youth in the tunnels and in the mines as a result of which he contracted tuberculosis. Isn't that true, Trav?

Mr. Travis: Yes.

[fol. 556] Mr. Witt: We will be able to show that up to the hilt if anybody wants satisfaction on that from the Mine-Mill records and if necessary from the records of the sanitarium on the West Coast.

Now, your Honor, I am not anticipating the case in the court to the jury on these issues of Dolan and Powers, but I refer to those, and we are prepared to leave it to whatever procedure will satisfy your Honor. We could I think consistent with the proper procedure make the request to your Honor that on the Dolan and Powers issues you stop and take evidence now as part of the hearing on this motion for the grand jury testimony, but this trial has been diverted so much and we feel we have taken so much of your Honor's time on these problems we won't press it.

The Court: That would do more than create a conflict in the testimony, would it? What would be established irrefutably by that? It would simply be a conflict in the testimony, wouldn't it?

Mr. Witt: That would show that this man is a deliberate liar.

The Court: That may be your construction. It might not be someone else's.

Mr. Witt: I say it and I say it advisedly.

The Court: I would say that, if it was established absolutely, it might prove that he is mistaken, but—

Mr. Witt: Let me tell you why I think as of now, if we are able to show what I have said, we show about Dolan and Powers that this man is a deliberate liar. I say it because of his answers on cross examination.

The Court: That is a question for the jury.

Mr. Witt: I understand it, but as far as this present issue is concerned it is a question for your Honor, and I want to say, to point out to your Honor why I think his testimony under my cross examination shows conclusively that he is a deliberate liar. It will take me just a minute on [fol. 557] each of these people, Dolan and Powers. On Dolan as soon as I got into that and he saw the direction of my testimony he caught himself, he remembered, and he was ready with his answers in the same way that these kind of witnesses always are, and he began to hedge about what Dolan's job may have been, there may have been other people there in addition to Communist Party leaders and so forth and so on.

And it was worse, your Honor, in the case of Powers, because as soon as he saw himself getting into trouble he, himself injected the fact—I may be overstating the record but I don't think I am—he, himself injected the fact that in February, 1946, Powers may have been in the sanitarium, and what was he doing but anticipating me? He knew that when he took the stand on direct examination and didn't qualify it, didn't ask himself any questions, he knew that the Board minutes for the February 6, 1946 meeting showed that Powers wasn't there and that Travis was there as Board member for District 7 which was Powers' District, and he knew that at that time because Powers was in the sanitarium Travis was the acting Board member.

He has given copies of those minutes to the prosecution. He had testified about that before. So, that is why I say I am sure in my mind that he was deliberately lying about Powers, and finally on that we showed that when he testified about that Steering Committee meeting prior to the Febru-

ary 16 Board meeting on the first time I think it was before the CIO, I could be wrong, he didn't say the Steering Committee was there, which would have included Powers, he said himself, and Travis and Skinner, the other three people he said of the Steering Committee were there, and he didn't say Powers. Powers gets into the act as the years rolled by, and this man becomes more and more pathological.

The Court: What is the legal basis you are contending that entitled you to see the grand jury minutes is what I am talking about.

Mr. Witt: May I stop a minute and talk to Mr. Deikman? First, before I get to the grand jury point, itself, your Honor, in referring to this witness's failure of recollection in all kinds of points including points in which he should obviously have recollection—

The Court: That goes to his credibility.

[fol. 558] Mr. Witt: May I finish my sentence? I have a distinct reference in mind.

The Court: All right.

Mr. Witt: I have in mind Mr. Justice Brennan's opinion in the Jencks case. Of course, the Jencks case didn't deal with the grand jury issue, but this is the reference, and this is the connection. I don't have it here with me, the opinion.

The Court: Where is the Jencks case.

Mr. Witt: We may as well get it. This is at page 667 of 353 of the official Supreme Court reports, and I will quote the paragraph if I may, your Honor. It is not very long. "The crucial nature of the testimony of Ford and Matusow to the Government's case is conspicuously apparent. The impeachment of that testimony was singularly important to the petitioner. The value of the reports for impeachment purposes was highlighted by the admissions of both witnesses that they could not remember what reports were oral and what written, and by Matusow's admission: 'I don't recall what I put in my reports two or three years ago, written or oral, I don't know what they were.'"

If your Honor doesn't mind, I think I will adopt Mr. Kelley's suggestion and read the next paragraph in that also. It is not too long. "Every experienced trial judge and trial lawyer knows the value for impeaching purposes of statements of the witness recording the events before time dulls

treacherous memory. Flat contradiction between the witness' testimony and the version of the events given in his reports is not the only test of inconsistency. The omission from the reports of facts related at the trial, or a contrast in emphasis upon the same facts, even a different order of treatment, are also relevant to the cross-examining process of testing the credibility of a witness' trial testimony."

So, we say from that, your Honor, that aside from the inconsistencies and the contradictions that the record this witness has made against himself in terms of his not remembering under cross examination and in the interrogation in Chambers justifies this motion under the cases.

Now, on the cases, your Honor, in the argument on that [fol. 559] there are cases without now getting into an argument on side issues, I think both sides can agree there is no doubt that there are cases holding that under Rule 6 (e), the so-called secrecy rule, since that rule was adopted, and the cases prior to the rule, the cases since the rule despite the language of the rule that on the proper foundation the trial court may order the production of grand jury testimony. Now, the issue becomes what is a proper foundation. There are cases, and I don't think there will be any dispute about it, in which for one reason or another what the witness testified to on a particular point before the grand jury developed in open court and developed in open court that the witness's testimony before the grand jury was inconsistent with or contradicted the witness's testimony in open court, and there can't be any question about those cases.

Now, here we are faced with a somewhat different fact situation, if the Court please. Your Honor is not permitting us to interrogate this man about his testimony before these three grand juries, the two in Denver and the one in Washington in the Gold case and the one meeting he testified about behind closed doors although, if your Honor did, we are quite sure in view of what has happened on cross examination of this man as to what would happen. We are quite sure, if we took him through each item of his direct testimony on this trial and asked him what the testimony was before the grand jury here in 1954 and perhaps in 1956

and asked him about his testimony in the Gold Grand Jury about the New York trade union meeting, he would say and my guess is with respect to each item of his testimony that he does not remember, so, we would not be advanced. But we would be interestd in trying that, if your Honor is so disposed. But aside from that we think we have a sufficient record without getting that kind of answer out of him or without getting him to admit that he perjured himself before one of these grand juries because of the points I have made because of the inconsistencies and contradictions we have already shown because of the extent to which he claimed his recollection fails him at each point where he thinks he is getting into trouble because of his pathological hatred of the defendant and everything I said in that connection because of these items of evidence showing that he has been going out of his way to tailor testimony over the years and all these other things that I said we think at the very least we are justified in urging your Honor to examine his grand jury testimony to see in what respects it departs from his testimony in this court on direct examination.

[fol. 560] The Court: Well, do you have any authority you wish to call to the Court's attention where under a situation generally analogous to the one we have here that the court ordered the grand jury records produced? Do you know of any case?

Mr. Witt: Your Honor, we have no case where we have a situation quite like this. The cases, as I said, are very clear about the contradiction need only be on one material part of the testimony as it develops in open court, and there are cases, as I said, which hold that the witness's testimony on that point should be produced for the Court first and that, if it turns out to be useful to the defense on cross examination, it is turned over to the defense.

We are saying that we are dealing here not only with an analogous situation but a much stronger one because of the nature of this witness, the volume of the inconsistencies and the contradictions and everything else as I have said and the obvious difficulties of getting this witness to admit that he gave testimony before a grand jury even if your Honor permitted us to interrogate him about his testimony before these grand juries, the obvious difficulty of

getting him to admit that he gave testimony before any grand jury inconsistent with his testimony on direct examination.

We say finally, your Honor, that elementary justice requires this: That the prosecution should be delighted to cooperate, because our minimum request is not that we examine this grand jury testimony but that your Honor do it. We know it is a terrifically burdensome task for your Honor, but we see no alternative in justice to our own cause, and we will be satisfied if your Honor looks at his own testimony and is satisfied that it is consistent with his testimony on direct examination on these different questions, that will be that, but we happen to be convinced that, if your Honor does that, your Honor will discover that this man was not only further inconsistent when he testified before these grand juries but in addition, if I am right in calling him a pathological liar, must really have spread himself to hurt this man Travis when he testified against him behind closed doors.

We say the whole philosophy of the whole Jencks case, the whole philosophy of these other recent decisions of the Supreme Court requires the Government in the interests of [fol. 561] decency and in the interest of disclosure of all the facts to cooperate in this enterprise and make this testimony available to us, but, if the Government isn't disposed to do it, we think the least they should do is at least voluntarily agree to make his testimony available to the Court.

The Court: Did you have anything to say?

Mr. Kelley: Well, I think most of what Mr. Witt has said isn't in the nature of argument at all, and I don't think I would care to dignify very much of it by responding. It seems to me it is the culmination of his wanting to vent his spleen here in attacking and castigating this witness.

Mr. Witt: I have no spleen. I am a lawyer. I am interested in the Constitution of the United States. I am interested in doing of justice by my Government.

Mr. Kelley: He has talked about pathological hatred of this witness toward Mr. Travis. There has been no evidence of that. The only pathological hatred that has been evinced here was that which counsel exhibited this morning when he went into a rage.

Now, we get down to the legal argument.

Mr. Witt: I move that be stricken.

The Court: I think we had better refrain from personalities about counsel. I am interested in argument.

Mr. Kelley: We will get down to the legal part of it. He is asking for grand jury testimony of this witness on two occasions.

Mr. Witt: Three occasions.

Mr. Kelley: You are even asking for another jurisdiction, is that right?

Mr. Witt: That's right, because that is relatively simple in terms of his testifying as to only one event, that meeting in 1948. Again, as I said the other day, we assume that a copy of that is in the possession of the Department of Jus-
[fol. 562] tice somewhere or other.

Mr. Kelley: Well, what he claims in his argument is that he has thoroughly impeached the witness already so that, if that be true, all he is asking for is some cumulation of impeachment material. He says that there is not a single instance of consistency in the testimony of the witness on any, as to any of these occasions he is testifying about.

The substance of what occurred there, the part that the defendant had in those situations has been consistent and not one inconsistency has been pointed out. Mr. Travis has been named at all of the meetings on every occasion whether he was testifying against Travis or someone else.

The requirement that the matter be produced especially as to the second grand jury in this jurisdiction is in my judgment a fishing expedition to prepare for the trial of the 14 defendants, and counsel has indicated that by asking specifically about some who were indicted here. It would be a burden on the Court, additional burden when this case is presented, one of the most unusual burdens I have had the experience of seeing placed upon a court, to have to go over that testimony and keep in mind all of the testimony that has occurred in this trial or to check with the record in order to determine whether there were any of these minor inconsistencies. I think it is purely a matter under the rules and under the law within the discretion of the Court, and I believe that Judge Swan's language in the United States vs. Alper, Second Circuit case decided June 20, '46, 156 Federal Second 222 at page 226 is particularly appropriate for the Court's consideration.

In this case, your Honor, the case was reversed on other grounds, and the Court pointed out some guides for the trial courts in connection with whether or not grand jury testimony should be given in the exercise of the Court's discretion, and these are some of the guideposts for the courts to follow in this situation, and I quote: "These will include the timeliness of the request for the minutes, the delay in the trial which may result, and the extent of the burden which will be imposed upon the judge by the comparison of the witness's grand jury testimony with his trial testimony. If the witness's grand jury testimony is very lengthy, it would be an intolerable burden and would delay the trial to require the judge to go through it on the [fol. 563] mere chance that some inconsistency favorable to the accused might be found. The trial of an indictment is of course an inquiry into the truth of the charge; but in such trial the judge must be as little an advocate of the accused as of the prosecution. When the testimony before the grand jury is in small enough compass to make any contradictions between it and the witness's trial testimony readily discoverable it is a tolerable duty to impose upon the judge an examination of the minutes. But to demand that he peruse many pages of an examination of a witness to discover possible contradictions is altogether to falsify his position; for then he becomes in effect an active assistant of the defense. He would have to bear in mind all that the witness had sworn to, and pick out from a mass of what may be, and usually is, verbiage any parts that may be contradictory. That involves an active participation favorable to one side, which should not be required. A great part of the law of evidence is based upon the practical difficulties that would incidentally arise from the admission of what, strictly speaking, is logically relevant; it is founded upon the recognition that here, as elsewhere in the law, we are seeking not logical perfection but the just settlement of a controversy."

Then there is just one other thing I want to mention to the Court, and that is this: That the standard of memory that Mr. Witt would impose upon a witness is absolutely inhuman and one which I do not believe any court would impose, and we respectfully urge that the request for the grand jury minutes in any of these instances be denied.

Mr. Witt: May I say a word, your Honor?

The Court: Yes.

Mr. Witt: Just on the motive that Mr. Kelley imputes to us in connection with our motion for this man's testimony before the 1956 Grand Jury, again, perhaps we did not make ourselves clear. We asked this man about Durkin, Marcotti, and Sanderson, three of those indicted in 1956, aside from Travis and the other ten, not to indicate that we are entitled to his testimony in 1956 about Durkin, Marcotti, and Sanderson. That is not included in this motion. We went into this man's testimony about Durkin, Marcotti, and Sanderson in open proceedings from a different point of [fol. 564] view which I tried to make clear to show how this man thinks and how he operates, but to make the record entirely clear our motion doesn't encompass that.

Our motion with respect to the 1956 grand jury testimony goes only to testimony we gave about the matters he testified to on direct examination, all by definition pertaining to Travis. Now, true, some of these other people will be mentioned, but that is unavoidable, and there will be on the face of it again by definition no discovery in that testimony unless this man has told different stories, because we are asking for his grand jury testimony which parallels his testimony in open court.

Now, secondly before I get to the Alper case, a word on what Mr. Kelley had to say about the standard of memory that I seek to impose on the witness, I think Mr. Kelley distorts the argument. Of course, even the witness one of the few times I think he said anything on direct on the witness stand is right in saying that you can't expect people when they talk in '50 and '53 and '54 and '55 and '57 and '58 about a meeting which was attended by 15 or 20 or 30 people in 1946, '47, and '48 to name the same people all the time. I recognize that is not how the human mind works, that is not how our memory works. But that is not our argument with respect to this record. We think this record goes far, far beyond that, and that just is not a question of memory for a man to come out with a different list of names beginning in 1950 and then continuing into '53 and '54 and '55 and '56 and '57 and '58 about these very important matters which are important in this man's life if only because he has testified about them so often and all the rest of it. But I don't

want to repeat my argument as to memory, but I think Mr. Kelley distorts it.

As far as the Alper case is concerned, if the Court please, there are two phrases in the part of the opinion which Mr. Kelley read to which I want to draw your Honor's particular attention. The first is contained in the following sentence which Mr. Kelley has already read, but just to isolate it, "If the witness's grand jury testimony is very lengthy, it would be an intolerable burden and would unduly delay the trial to require the judge—"

The Court: This part about the burden on the Court, I am [fol. 565] not concerned about that.

Mr. Witt: I want to say a word about that later, but let me make this other point first, if the Court please. "— is very lengthy, it would be an intolerable burden and would unduly delay the trial to require the judge to go through it on the mere chance that some inconsistency favorable to the accused might be found." We agree with that aside from the burdensome part. We agree with the part where the court says there the trial court should not be required to go through it on the mere chance that some inconsistency favorable to the accused might be found. We are not asking that.

We are asking for the production of these minutes, because we think we have laid a foundation so that it won't be a fishing expedition, it won't be a mere chance. We are morally convinced that this man's grand jury testimony, and I will talk about the most important episode, is grand jury testimony in 1954 before the grand jury which indicted this defendant in this case, we are morally convinced that your Honor will find in examining this man's testimony before that grand jury that time after time after time after time he said inconsistent things before the grand jury compared with his testimony on direct examination on those matters. That is the first reference in that opinion I had in mind.

Again, along the same line a few sentences down the Court says, "But to demand that he peruse many pages of an examination of a witness to discover possible contradictions is altogether to falsify his position; for then he becomes in effect an active assistant of the defense." What I am drawing attention to there in that sentence, your Honor, is the reference to requiring the trial judge to do this

job to discover possible contradictions. We are not asking that be done. We say, again, we have laid a foundation, and we think we have shown inconsistencies and contradictions already. If we are right as to what we have shown, even if there is grand jury testimony that is consistent on many of these things with his testimony on direct in this case, it would necessarily be inconsistent with what he said about those things in open court on other occasions.

Finally, if I may impose on your Honor despite your indication that you are not impressed with the argument that it would be too great a burden on the Court, I think the [fol. 566] emphasis in that part of the opinion, the emphasis that Mr. Kelley is leaning on is somewhat peculiar and illogical If the Court were saying in that opinion, "If the job is an easy one, you can just look at a sentence of the testimony and get the job done, and that is all there is to it, then you do justice to the defense and have the trial court look at it. But if the job required in looking for inconsistencies is with respect to 10 or 20 or 30 matters, then, it is too burdensome for the Court to do it," in other words, the stronger your foundation is then the less you are entitled to production, and we don't think that makes any sense. In any event, if Mr. Kelley is fearful this is too great a burden on the Court, the defendant will be very happy to undertake the burden if the Court orders the production of the grand jury testimony directly to the defense.

Mr. Kelley: These things have been testified to in many, many proceedings. Has there ever been a contradiction in any one of them by anybody?

The Court: I am going to inquire a little bit. That is the very thing I would like to hear about, Mr. Witt's version of that. You call these variances in the testimony that have been pointed up. Let's discuss first these questions of attendance. On one occasion say the witness testified certain persons were there, on another occasion he omitted one of them and put somebody else in, is there an inconsistency in that? Doesn't that simply show maybe something that would reflect upon the quality of his memory? But where is the inconsistency?

Assume by way of illustration, if one of us were testifying about this meeting right here today or this gathering here in Chambers and we were asked to mention those who

were present and we named, someone named four or four (sic) that were present and said there were four or five more present whose names he could not recall, then at a subsequent time the same witness was asked the same question and he named four people and possibly named a different one or even two different ones than he named in the first instance, that would be something that would be considerable with respect to determining his quality of memory, but where would there be any inconsistency when it has never been shown in this record so far as I know, makes no indication that anyone that he has placed at these meetings was not there. In other words, there is no contradiction of his testimony with respect to these people [fol. 567] being present. He may have named one in this trial and one in another and somebody else in a third trial but always, as I recall the evidence, it was a meeting where there were a considerable number, at some of the meetings 75 or 100 or something like that.

There is no testimony that he was roping in the people he designated these various times or that he was telling an untruth about that. It simply was that he mentioned names at different times. Now, that is a variance that is true. As I say, that is a matter for consideration by the jury with respect to considering his ability to recall and remember and apply that test to his other testimony, but where are these inconsistencies that you are talking about in the evidence in that particular class? Let's confine it to that group, and that is the bulk of what your contention is based upon.

Mr. Deikman: I have a thought on that that I would like to express, and then Mr. Witt will have the opportunity to expand on that. Mr. Kelley has deprecated the value of the inconsistencies between the names at the same meeting related on different occasions. Your Honor, the only thing that is shown in this trial is the meetings, and these meetings are all related, are related to the defendant Travis, and the only way that we can show the inconsistency is to show how he varies those meetings from testimony to testimony, so that what is inconsistent here is not the individuals who were present at that meeting but the character of the meeting as well.

The Court: I don't know, where is there any inconsistency about that at all? I haven't heard anything that would make an issue of that.

Mr. Deikman: Your Honor, to say that a meeting involved somewhat less than 75 people on one occasion and to say that the same meeting involved 100 people—

The Court: I was going to mention that a moment ago, that is a question that goes to the credibility. There is nothing in the way of any basic contradiction. 75 more or less or 100 it would be inclusive of 75. That is a matter that merely goes to the witness's credibility and doesn't—well, it is just a matter to consider by the jury with respect to the weight to be given the testimony. There is noth-[fol. 568] ing that would give a basis in that circumstance to say that the testimony of the witness is untrue. That is just an estimate. A man could guess it is 100 feet across the street, and then the next time he says it is 50. That goes to the weight of his testimony.

Mr. Deikman: The point I was making, the point we are interested in is the inconsistencies of the meetings themselves and not the inconsistencies of the people who attended. But more important I think is this: It seems to be almost implied in what your Honor is saying and what Mr. Kelley has said that inconsistency implies the witness must be shown to be lying. That is not the case. An inconsistency may arise because of faulty memory, and when you go back to experiences which are supposed to have happened to the defendant in 1942 and which the defendant and in which the witness is supposedly testifying with an accurate memory and then you show consistently page after page that his memory is faulty and that he changes the names of people at these various meetings, then these inconsistencies of as high a degree and of as high a character as an inconsistency where you show it is possible that he is downright prevaricating are worthy of consideration.

The Court: That is a matter for argument, because, as I said, to take the illustration I mentioned a moment ago, if you were called as a witness in a case involving this meeting here today and named Mr. Kelley and Mr. Witt and Miss Marson and myself and could not recall other names and a year afterwards you testified about the same meeting and mentioned that Mr. Eich was here, does that relate to your veracity or to the truth of your statement and when the fact is that all of us were here, the whole five that have been named, four one time and the fifth one the next time?

It simply goes to the question of the reliability of your memory which is a thing for the jury to determine.

Mr. Deikman: And it goes to show that there are enough inconsistencies in my relation of an event to show that there may be an inconsistency as to what I have said occurred at that meeting.

The Court: That is a question for the jury.

Mr. Deikman: No, it is an inconsistency about the meeting and what was said at the meeting as a part of the meet-
[fol. 569] ing and who was there at the meeting as a part of the meeting.

The Court: Actually, anything that reflects upon a witness's credibility can be attributed to an appraisal of his whole evidence. Now, further, these incidents here, for example, about when he joined the Communist Party, which as I recall from the evidence he mentioned three years which he mentioned three different times, that simply in my estimation, that relates to the question of the weight to be given his testimony. I know of none of these cases in which any court has ordered the production of grand jury testimony that you didn't have something in the way of some positive material, an almost conclusive fact that was involved in the proceeding. These matters that we are talking about now, who were at those meetings, when, as I say, it is not contradicted in the record at all that anyone that he has mentioned was not there whether he mentioned it at one trial or another.

Another thing is that this witness has testified numerous occasions, his testimony has been transcribed, and these variances that are pointed up are the result of a minute comparison of the testimony at these trials, and there are very few witnesses whose testimony given on a number of occasions would not be subject to some variances either in method of statement or fact. None of these matters that we have talked about here at these meetings, who were present, when, I repeat again there is no dispute as far as the record now that the people were there. It is simply that he didn't mention at some time a person and mentioned that person at another time or omitted him at another time. Those are not vital it doesn't seem to me any more than this question of when he belonged or joined the Party, because those all are matters that go along with the many other things

that you delved into, things that the jury can consider in determining what weight should be given his testimony just like any other witnesses.

Now, this prejudice business, I don't know, that, again, is a thing that goes to the weight of his testimony. I know of no case in which the Court can say arbitrarily the witness's testimony will be disregarded because he is prejudiced.

Mr. Witt: We are not asking that.

The Court: I am assuming that there may be some degree [fol. 570] of prejudice. There seems to be an antipathy between the defense side and the witness and the witness and the defense, but, if pure hatred, if you want to put it that way, were considered in a murder trial where the spouse of the murdered man were testifying against the defendant, no one could say because she hated the defendant she was disqualified as a witness.

So, the whole thing seems to be a situation where these matters that you are urging on the Court are simply matters that go to the credibility of the witness's testimony and the weight to be given his testimony and under no case that I know anything about, and there is no case that has been called to my attention that would include within its framework a situation like that as being one for the production of the grand jury records. So, as I see the matter, there has been no showing made here that would warrant the Court in ordering the production of the grand jury records even for inspection by the Court or for direct use by the defendant.

Secondly, and, of course, it is beside the point, in view of my thinking on the main question I am rather satisfied that the Court would be absolutely without power to compel the production of grand jury records in some other district, I am satisfied about that, because those are under the control of the court in that district, but that is clearly beside the point. I want to emphasize again that the amount of work and labor that might be imposed on the Court in looking over any grand jury records is not a factor in my consideration of the case at all. If the defendant is entitled to that right, I am willing to do the work that would be incident to looking the records over, but what I am satisfied is that there is no foundation here laid by the factual

situation that would warrant the Court in ordering the production of the grand jury records.

Mr. Witt: May I make a short statement for the record?

The Court: Yes.

Mr. Witt: We do not want to press your Honor any further if your Honor is satisfied, but we do want to make our position clear on the record. Just in passing, it is not important and I am sure your Honor didn't intend it that way, [fol. 571] your Honor was talking about this qualifying witnesses. That is not what we are seeking. Of course, we agree with your Honor that as the record now stands in open court the witness's credibility is for the jury, and we are not asking that your Honor throw this testimony out at this point. We are asking merely a further investigation which we think is justified, but as I say that is not too important.

Secondly, just again more or less in passing, your Honor, on the question of when this man joined the Party and why I had to take a few minutes with it, of course, people talking or testifying a quarter of a century later about certain matters may not remember the year, but my point about it, the one I tried to make earlier, your Honor, and that is why I come back to it, because I do think it is one of these little flashes you get in a trial which reveals the character of a witness, in the first place, joining the Communist Party is taken to be an important step for any person to take in this country and obviously was a very, very important step for this man, because, if he was telling the truth to the FBI in 1951 that he joined the Party early in 1932, within a very short time thereafter, I forget the month but it was still 1932, he was selected to go to Moscow, your Honor.

So, that highlights the fact that it would be highly abnormal for this man to forget normal operations of the mind in terms of memory that it was 1932 that he joined the Party especially for him to forget that or to change it after 1951, because he sat down in his own handwriting and made a statement about that matter for the FBI, but, as I say, I don't want to spend too much time on it.

Next, your Honor, I didn't mention this variance in this estimate.

The Court: No, you called them inconsistent.

Mr. Witt: I am going to something else. I am sorry.

I am referring to the meeting at the Russian Cooperative Restaurant which your Honor referred to in passing a few minutes ago. That to me, your Honor, is another one of these little flashes that you get in the testimony of a witness for this reason; The record shows that he estimated on the prior occasion whenever that was that there were 100 [fol. 572] or more, maybe he said a little less, that was the prior occasion, while on his testimony here last week on direct he said 75 using a qualifying phrase indicating maybe less rather than more. But it doesn't matter. We will leave all the qualifications to one side.

Mr. Vincent: That doesn't state the record accurately.

Mr. Witt: Let me make my point.

Mr. Vincent: I wanted to make it clear that wasn't accurate.

Mr. Witt: I am leaving aside the qualifications, your Honor. It just isn't normal for a man with the passage of years to reduce his estimate of the number of people at a meeting which which (sic) he has been testifying for years, and it is clear from what your Honor said about the way this man has been subjected to cross examination over the years that he was deliberately curtailing that figure in order to avoid difficulty on cross examination. On the prior occasion he said 100. He felt he could get away with it more easily. This time he figured he had better drop it to 75, and the individual doesn't work that way in terms of normal memory, your Honor.

I have two points now if I can make them very brief.

The Court: I just want to say in connection with what you have said, the reason I pointed out about this matter being, the matter of his credibility and the weight to be given his testimony being a question for the jury I understood your position here to be in this argument that his testimony and these variances that I have mentioned were such that the Court should say that he was absolutely beyond belief and that, therefore, we should get this other matter to further substantiate your contention along that line. If I misunderstood your argument, I commented on those things.

Mr. Witt: It is probably my fault because of the vehemence with which I express myself. Your Honor, it is true that I was saying in our opinion this man is absolutely

unworthy of belief, but in connection with this motion we do not think it is necessary for your Honor to go that far without asking your Honor to do that. All we are saying to your Honor is that the record as it now stands we have [fol. 573] cast sufficient doubt on his honesty to warrant your Honor in the interests of justice to use the phrase Rule 6 (e) I think uses, to justify taking a look-see at what he said behind closed doors. If we turn out to be wrong, we are wrong. I won't hate or love this man any more or less despite what Mr. Kelley says. I have a little more confidence perhaps in our system of justice either way. But all we are asking is that we take a look.

The Court: But over the years I want to point out again, I haven't made a very detailed search on this question, but the cases are few and far between, I think that is a fairly accurate statement, in which grand jury records have been produced. There is generally as far as I know some very specific thing that happened factually in those cases that warranted the Court to produce them. In other words, they are generally not produced merely on suggestion of some inconsistency even with the witness's statement but something that goes to the very basis of the matter, and that is what I was attempting to point out, and I don't expect there will be any particular object in discussing this. I am satisfied the motion should be denied. What else were you going to mention?

Mr. Witt: I was going to say a few more things in support of the motion, but in view of your Honor's ruling I will make every effort to keep quiet. I think we are done on this.

Mr. Kelley: I want to ask that the witness be excused.

The Court: Do you have any objection to his being excused?

Mr. Witt: No, we have no use for him, your Honor.

The Court: You can show the defense has no objection to his being excused.

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[fol. 582] In Open Court

The Court: The government may proceed.

Mr. Kelley: We would like to call Mr. Fred Gardner to the stand.

The Court: He may be sworn.

[fol. 583] FRED GARDNER, a witness called on behalf of the Government, testified:

Direct examination.

By Mr. Kelley:

Q. Will you state your name, please?
A. Fred Gardner.
Q. And where do you live, Mr. Gardner?
A. 615 West Park, Butte, Montana.
Q. And how long have you lived in Butte?
A. Since February, 1954.
Q. Have you now or have you at any time been a member of the Communist Party?
A. I am not now a member of the Communist Party. I have been.
Q. During what period of time were you a member of the Communist Party?
A. From 1933 to 1955.
Q. Now, are you now or have you ever been affiliated with any trade unions?
A. Yes, sir.
Q. And will you relate your trade union history?
A. From 1933 to about 1936 I was in the Building Service Employees International Union in New York City. From 1936 to 1950 I was an International Representative of the United Electrical, Radio & Machine Workers, from 1951 to 1955 I was employed as an International Representative of the International Union of Mine, Mill & Smelter Workers, and from 1956 until the present time I am presently employed as Consultant and Conciliator of the International Hod Carriers, Building and Common Laborers Union of America.
Q. At the present time do you have an assignment elsewhere than Butte?
A. Yes, sir, at the present time I am employed in Anchorage, Alaska.
Q. That is a temporary assignment, is it?
A. Yes, sir.
Q. Now, are you acquainted with Maurice E. Travis?
A. Yes, sir.

Q. And did you become acquainted with him during the time that you were with the International Union of Mine, Mill & Smelter Workers?

A. Yes, sir.

Q. When did you first meet Mr. Travis?

A. Well, to the best of my recollection I first met Mr. Travis at the airport in Buffalo, New York, in the fall of '51.

Mr. Kelley: Now, Mr. Witt, do you want the witness to identify Mr. Travis?

[fol. 584] Mr. Witt: No, we will stipulate that the witness knows Mr. Travis and Mr. Travis is the same Mr. Travis that is the defendant in this court.

Mr. Kelley: Thank you.

Q. At the time you met Mr. Travis at the airport at Buffalo, New York, where were you living?

A. I was living in Cleveland, Ohio.

Q. Where were you working at the time?

A. I was working in Cleveland, Ohio.

Q. And that was with the Mine-Mill Union?

A. Yes, I was an International Representative of the Mine, Mill & Smelter Workers.

Q. Did you meet anyone else at the airport in Buffalo at that time?

A. Yes, sir, Jack Clark, the International President of the Union came in at that time.

Mr. Witt: I am sorry, Mr. Kelley. May I have the last question and answer read back?

(The reporter read the last question and answer.)

Q. Now, after you met Mr. Travis and Mr. Clark what did you do?

A. Well, we proceeded from the airport to Port Colborne, Ontario.

Q. On what means of transportation did you use?

A. I had a vintage Chevrolet coupe that I drove over to Port Colborne.

Q. And then where did you go in Port Colborne?

A. To the home of the Business Agent of the Port Colborne Local of the Mine, Mill & Smelter Workers.

Q. And then following this occurrence or this going to the home of the business agent did you go somewhere else?

A. Well, yes, we left there, and at the suggestion of Mr. Travis I put my car in the garage so that the Canadian Police would not be able to identify my car, and we got in a staff member's car in Port Colborne and drove to a town, I believe it was Welland, Ontario. I could be mistaken on that town.

Mr. Witt: I am sorry, may I respectfully request that your Honor direct the witness to keep his voice up?

The Court: Will you speak a little louder so the Jury [fol. 585] and counsel can hear you?

The Witness: Yes, sir, I shall.

Mr. Witt: I make that request, if the Court please, because there are one or two parts of that answer I didn't quite catch. May I have it read back?

The Court: You can have it read back, and then you can speak a little louder.

The Witness: Yes, sir, I shall.

(The reporter read the last question.)

Mr. Witt: I now respectfully move that that part of the witness's answer relating to what he did with his car and to Travis's suggestion and the purpose of it be stricken as being irrelevant and prejudicial.

The Court: I understand that was Mr. Travis's statement to the witness from the way he testified, wasn't it?

Mr. Kelley: Yes, that's right.

Mr. Witt: Well, he didn't say anything about that.

The Court: That was the import of the answer.

Mr. Witt: He said what happened. He didn't say what he said to Travis or what Travis said to him about that. Let the witness testify about that.

Mr. Kelley: We will cover that in that way if you like.

The Court: The motion to strike will be denied.

Q. Now, before you left for Welland, Canada, from this Business Agent's house did Mr. Travis make any statements in connection with the means of transportation?

A. Yes, sir, he suggested that I put my car in the garage at the Business Agent's home to avoid the Canadian Police

being able to check the car and find that it is a representative of Mine-Mill's car, and we proceeded to Welland in the car of one of the Canadian staff members.

[fol. 586] Mr. Witt: May we approach the Bench? I have an objection to this whole line which I do not think should be made in the hearing of the Jury.

(Conference at the Bench.)

In Open Court

The Court: If you have any objection, Mr. Witt, you may proceed.

Mr. Witt: If the Court please, I make this objection because of what I happen to know, as I told your Honor and Mr. Kelley at the Bench, something about the history of the relationship between Mine-Mill and the Canadian Government and the Canadian Police, so that it appears to me that this line of testimony is irrelevant on the ground that the International Union of Mine, Mill & Smelter Workers has been organizing workers in the nonferrous metals industry in Canada since at least the '40's, and during all that time down to date the Canadian Government has been anti-union as far as that is concerned, as far as Mine-Mill is concerned, and has given everybody connected with Mine-Mill difficulty in doing their normal organizing and collective bargaining work whether those people allegedly are Communists or not.

As I said at the Bench, the Canadian Government has kept out people who Mr. Kelley would agree nobody has ever suggested were Communists simply because they were connected with Mine-Mill, so that, if all this is is (sic) going into that improper attitude of the Canadian Government which happens to be much better now, I think it is irrelevant and opens up a case within a case and has nothing to do with this defendant.

The Court: Of course, the Court does not have a purport of this witness's testimony, there is nothing at the moment that indicates it is irrelevant, and I assume that the Government, of course, has knowledge of the fact that the evidence must be relevant and its relevancy will appear. What is the situation, Mr. Kelley?

Mr. Kelley: That's right, your Honor. Its relevance will appear very shortly in this witness's testimony.

Mr. Witt: Will your Honor res[illegible]e ruling on the mo-
[fol. 587] tion and motion to strike pending Mr. Kelley's examination?

The Court: In the event it turns out to be irrelevant, you can object again, and, if there is anything that is received of that nature, you can move to strike, but the objection will be overruled, and you may proceed, Mr. Kelley.

Q. Mr. Gardner, after you left the Business Agent's house what occurred?

A. We proceeded to Welland where a meeting was held.

Q. And who accompanied you to Welland?

A. I was in the car of one of the Canadian staff members and Maurice Travis, and there were probably three or four staff members in the car. As I remember, we had four people in the car.

Q. And you went to a meeting at this other town?

A. Yes.

Mr. Witt: May the time be fixed, number one, and will Mr. Kelley ask the witness to name these people if he remembers.

The Court: You can do that if you wish to on cross examination. I do think the time might be fixed, Mr. Kelley.

Mr. Kelley: I thought we had fixed the time. You mean the time of day?

Mr. Witt: All the witness has said about the date is the year, if I recall, it was the fall of '51, but in view of our problems with the first witness—"Late '45" and "Early '46"—and that kind of business we would like the witnesses to be as specific as they can be about dates.

Q. Mr. Gardner, can you place the date when you met Mr. Travis, at the airport in Buffalo at this time?

A. To the best of my recollection it was September or October of 1951, and the only basis on which I fix it, it was a period of time when I had my old Chevrolet which I got rid of early in '53, and that was in the fall—or early in '52, and this was in the fall of the year when this

occurred, so, to the best of my recollection it would be September or October.

Q. Do you know with reference to when you became affiliated with the Mine-Mill Union whether or not this was [fol. 588] the first time you had met Mr. Travis?

A. Yes, sir, to the best of my recollection it was the first time I had met Mr. Travis.

Q. And about when did you go to work for Mine-Mill?

A. I believe it was the latter part of August or the first week of September, 1951.

Q. Now, do you recall the name of the Business Agent that accompanied you from his house over to Welland?

A. No, sir, I don't. I am completely unfamiliar with the Canadian staff, and I was—

Mr. Witt: Excuse me, Mr. Gardner. I move that the answer the witness gave after he said he doesn't know be stricken and the witness be cautioned not to make explanations each time he gives an answer.

The Court: No, the answer can stand. The motion will be denied.

Q. Did you know any of the other people besides Mr. Travis and Mr. Clark who accompanied you from this Agent's house to Welland?

A. No, sir, I was very new in Mine-Mill and was completely unfamiliar with these people.

Q. Now, did there come a time that evening when you and Mr. Travis were alone?

A. Yes, sir, we returned from Welland and picked up my car in Port Colborne, and he and I returned to Buffalo.

Mr. Witt: Excuse me. Did he say "he and I", Travis?

Mr. Kelley: Right.

Mr. Witt: I am sorry, your Honor.

Q. Mr. Clark then did not accompany you on this return trip, is that correct?

A. No, sir, he did not.

Q. Now, on the return trip did you and Mr. Travis have a conversation?

A. Yes, we did.

Q. Do you recall the substance of that conversation?

A. Yes, I do.

Mr. Witt: Excuse me, your Honor, if Mr. Kelley is going to another aspect of that incident, I think this is the point, I am not sure, Mr. Kelley can clear me up if I am wrong, this is the point at which I should make my [fol. 589] motion to strike. Mr. Kelley is now asking him a conversation with Travis after something or other took place in Welland. So, at this point I do not see the relevance of the witness's testimony about what was done with the car at the Business Agent's home and why what was done was done.

Mr. Kelley: I think counsel will as soon as this conversation is related, your Honor.

The Court: All right, the objection is overruled, and the motion to strike is denied, and the witness may answer the question.

A. Well, in substance we first discussed the fact that Travis had pointed out—

Mr. Witt: I object to this—I am sorry to interrupt the witness again—I don't want this general—

The Court: If you will let the witness answer the question, I think everything will be better instead of anticipating something he is going to say.

Mr. Witt: If it is prejudicial to the Jury, I think it is proper to interrupt.

The Court: The question simply was, what was the conversation, and that is what he is testifying to.

Mr. Witt: He said "we discussed". The witness should tell the Jury what he said and what Travis said in the normal way a witness testifies about conversations.

The Court: He can give what was said in the conversation. It is just a question of how to state it. Go ahead.

A. Travis told me that I had come to Mine-Mill well recommended and he was very happy for that, that the Communist Party of Cleveland had given me excellent recommendations when I came to Mine-Mill. Also, in the conversation returning from Port Colborne to Buffalo he indicated to me that, he told me that he had considerable difficulty in crossing the border into Canada because of his membership in the Party and because of his public resignation from the Party, that was printed in the Mine-

[fol. 590] Mill Journal in which he regretted the necessity of resigning from the Union because of the need for such resignation to conform to the Taft-Hartley affidavits.

I asked Travis if the AFL and some of the other CIO unions were having the same difficulty. He said no, the Canadian authorities in the main were putting the clamps down on the left-wing unions such as Mine-Mill and UE, and we very briefly discussed his resignation from the Party in which he pointed out that he believed that resignation, that public resignation was a mistake because it gave the enemies of the Party an opportunity to use that in pointing out that his wasn't a true resignation from the Party, that actually it was done merely to conform to Taft-Hartley affidavits, and they recognized, the enemies of the Party recognized that this was not an actual resignation, and in substance that is about what we discussed. There were probably other matters of less importance.

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. Witt: Now, at this time, if the Court please, I move for a mistrial on the basis of the speech that this witness made particularly his references to the attitudes of the Canadian Government, the Canadian Police, to so-called left-wing unions. Perhaps the motion would be out of order if this is the first time this Jury had heard material like this from the witness stand, but in view of like, similar references in the same area time after time by the witness Eckert this man's speech along the same lines hopelessly confuses the issues in this case, and it is impossible to believe that this Jury can perform its functions under the law. Finally, you will have noted, your Honor, that this man did not refer to simply the Communists as far as the Canadian Government is concerned, he referred to left-wing unions.

The Court: He is testifying to a conversation had with the defendant, and the things he has testified to are the things the defendant told him.

Mr. Witt: But, your Honor, if they talked about having breakfast or dinner together, it would not be relevant, and this is not only irrelevant but the point to the motion for

dismissal is that it is highly inflammatory and prejudicial. Even if it had probative value under the cases, if it contains the possibility of confusing or prejudicing the Jury, it is inadmissible.

[fol. 591] The Court: The motion for mistrial will be denied.

You may proceed, Mr. Kelley.

Mr. Witt: I now respectfully request the Court to caution the Jury that this man's statements about left-wing unions—

The Court: That is not this man's statement. Those are the words of Mr. Travis testified to by this witness.

Mr. Witt: All right, your Honor. I am probably wrong. Then, I will revise what I was starting to say. I respectfully request that the Jury be instructed that what this witness said Mr. Travis said about left-wing unions be disregarded, because that is not evidence against this defendant on trial.

The Court: The motion will be denied.

Q. Mr. Gardner, in your testimony relating to the conversation and particularly as to what Mr. Travis said I believe you said that he referred to resigning from the Union. If you made such a statement, would that be correct?

A. No, sir, he referred to resigning from the Communist Party.

Q. Now, directing your attention to the year 1953—

Mr. Witt: Excuse me, Mr. Kelley. Now that Mr. Kelley is very obviously going to another subject I now renew the motion to strike the witness's testimony about the disposition of the car at the Business Agent's home in Port Colborne and what Travis said to him in connection with the Canadian Police and so on.

The Court: The motion will be denied. The testimony will stand.

Q. Mr. Gardner, did there come a time when you left the Cleveland area and moved while you were still with the Mine-Mill Union?

A. Yes, sir. In early June of 1953 I was transferred to the Coeur d'Alene Mining District of Idaho.

Q. At that time did you have occasion to have a conversation with Mr. Travis?

A. Yes, sir, I was instructed by Mr. Travis on my way to the Coeur d'Alene mining district to stop in Denver for a briefing by him on the Coeur d'Alene situation.

Q. Did you come to Denver?

A. Yes, I did.

Q. And that was—

[fol. 592] Mr. Witt: Will the witness fix the place of the conversation in Denver?

The Witness: The conversation took place in the—

Mr. Witt: The witness hasn't been given a question. I was addressing the Court.

The Court: What was the question?

Mr. Kelley: Well, I was just laying the foundation, your Honor, to get to a conversation, and Mr. Witt has suggested part of the foundation which I intended to lay.

Mr. Witt: All right.

The Court: You may proceed.

Q. On your way from the East did you stop in Denver in June, 1953?

A. Yes, sir, I did.

Q. Now, when you got into Denver where did you go?

A. I went up to the International Office of the Mine, Mill & Smelter Workers.

Mr. Witt: I apologize for being persistent, and perhaps I am wrong, but, if I follow this thus far, the witness said that Travis told him to stop in Denver. Now, all I am suggesting is, so that the record will be clear and we will be able to cross-examine this man, is that we be told it was in a long-distance conversation or face to face—

The Court: You can ask him on cross examination. Mr. Kelley doesn't need to go into that. You can ask him that on cross examination. Go ahead, Mr. Kelley.

Q. I believe you stated that you went to the office of the Mine, Mill & Smelter Workers here in Denver?

A. Yes, sir.

Q. And did you see anyone at that time?

A. Yes, sir, I met Jack Clark, the International President for a brief greeting, and I spoke very briefly with Harold Sanderson who I believe at that time was Comptroller of the Union.

Q. Now, following the conversation or the period that you spent in the Mine-Mill offices did you then see Mr. Travis?

A. Yes, I was directed to Mr. Travis's home, and I went [fol. 593] there and remained there until the following day.

Q. Now, did anyone accompany you to Mr. Travis's home?

A. Yes, my wife and children.

Q. While you were at Mr. Travis's home did you have a conversation with him?

A. Yes, I did.

Q. And who else was present at that conversation?

A. Mrs. Travis and my wife.

Q. And when with reference to your getting to Denver did this conversation occur?

A. The same evening that I arrived in Denver.

Q. Now will you state the substance of the conversation with Mr. Travis at that time?

Mr. Witt: May I suggest in terms of what he said and what Mr. Travis said.

A. Travis informed me—.

The Court: Go ahead.

A. Travis informed me that there was a serious factional situation within the Communist Party in the Coeur d'Alene area in which the forces of Pete Piekarski, who was the Section Organizer of the Communist Party and an employee of the Bunker Hill and Smelter Mining Company, and Rudy Hanson, who had resigned as International Representative of Mine-Mill, on the one hand, were opposing the Rocky Mountain Regional Officers of the Communist Party and Chase Powers, the Board member of the Union for that particular district, and in view of the serious factional difficulty and in view of the fact that the opposition forces within the Party appeared to be in a majority in the State Committee that I had better re-

main aloof from any Communist Party activity in the Coeur d'Alene area during that period until and unless I was notified to take part.

Now, he also told me that Cozy Dolan, an employee of the International Union, had filed charges against Rudy Hanson with the State Committee of the Communist Party in Idaho and that those charges were in the process of being handled by the Party. He indicated and told me that there was some difficulty there, because the Hanson and Piekarski forces within the Party appeared to have a majority and it was pretty rough going for those people who were attempting to expel Rudy Hanson from the Party. He did, however, tell me that he felt certain that [fol. 594] this expulsion would take place and that as the matters cleared up in Coeur d'Alene I would be contacted by somebody from the Rocky Mountain Region of which I would be notified by him before that person came in so I would know who I was talking to and at that point I could reactivate myself in the Party.

Mr. Kelley: You may cross-examine.

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[fol. 598]

MOTION FOR PRODUCTION OF STATEMENTS UNDER SECTION 3500 AND FOR PRODUCTION OF GRAND JURY MINUTES AND RULINGS THEREON

Mr. Deikman: At this time the defense moves for production of statements under Section 3500 as previously requested in regard to the witness Eckert. In addition we move for production of all grand jury minutes in which this witness has testified before grand juries which we are advised he did do in this District in 1956, and he also testified, as Mr. Kelley advised us during the recess, before grand juries in other Districts on several occasions.

The Court: I think there has been no foundation laid for the production of any grand jury records, but what does the Government have to say with respect to records which may be demanded under Title 18, 3500?

Mr. Kelley: We have some none of which are wholly related to the testimony of the witness on his direct examination, so, it will be necessary to submit them to your

Honor for examination and excision of those parts which the defense is not entitled to, and we are prepared—

The Court: You are prepared to submit them to the Court right now? You have them available?

Mr. Kelley: We have all of them but two which are across the street, and we will get them immediately.

The Court: In those circumstances the Court proceeding under 3500, of course, will examine the items produced and will determine what should be furnished the defendant and what, if anything, should be withheld in light of your objection of turning them over to the defendant in their original form.

Mr. Kelley: Yes, and may I suggest that we proceed with the submission of these to you, proceed with the request made by the defendant to produce these documents, that we get them to your Honor just as soon as we can and that we, I will represent there aren't very many of them, and that we proceed to get the parts they are entitled to photostated, and we can complete this witness, at least get started on it early this afternoon?

Mr. Deikman: May it please the Court, we also move that we be given the same opportunity as we were in the case of the witness Eckert to go into the question of laying [fol. 599] a foundation for his Grand Jury testimony and in regard to showing the completeness of the reports which are submitted.

The Court: You will have that opportunity, and the Court simply denied your request now on the basis there has been no foundation. I assume that you are not ready to proceed with the cross examination until you have this material available to you, is that right?

Mr. Witt: It is not a question of whether we are ready or prepared to. Under Section 3500 we are entitled—

The Court: I understand that.

Mr. Witt: —to these documents before we go ahead.

The Court: Whether that be true or not the Court is not going to require you to go ahead if you tell the Court you wish to see these before you do go ahead.

Mr. Witt: Yes, and so it will save time later that is our position in the case of every witness.

The Court: Is there any reason we cannot continue with some other witness?

Mr. Kelley: Your Honor, if we get these documents to you for your examination—

The Court: What I have been trying to avoid throughout here is this constant excusing of the Jury and delays in the taking of the testimony, and, of course, some of that is probably unavoidable, and I have no notion about how long it will take to look over these reports or how extensive they are or how long it will take to provide photostats of the parts of any that are given to the defendant, and to have the Jury just waiting around while we are just doing all this is the thing that should be avoided if it possibly can. Is there any reason why we cannot proceed with some other witness and then furnish me with those at noon, and I will look them over during the noon hour? I have no idea how long it will take. Can't we proceed with some other witness rather than just having the Jury doing nothing in the meantime?

[fol. 600] Mr. Kelley: I think we are going to reach a point where we are going to have to do something other than during the noon hour without the Jury, and it seems to me we could expedite it about as well if we would get these to you right away so that we know what part is to be photostated and maybe by 1:30 or 2:00 o'clock the whole process could be done and we could go ahead with the cross examination.

The Court: Well, let me inquire, Mr. Witt, and this I am not insisting if this is not proper, I mean, if you have these reports, would you be able to proceed with the cross examination, or would you require time to examine the reports and consider what you wish to do? I mean can you make an estimate on that?

Mr. Witt: My guess would be, if the Court please, that we would want time to examine the reports, and then in reference to what Mr. Kelley had to say we will have to have the hearing in Chambers along the same line as we had with respect to the witness Eckert before we can go ahead and cross-examine this man. I thought we agreed yesterday in Chambers, your Honor, I could be mistaken,

that in any event we would not begin the cross examination of this man until Monday at the earliest.

Mr. Kelley: That, your Honor, was based on the proposition that Mr. Witt wanted the testimony of this witness in the Cleveland trial, and he has had part of it I think sometime last week and he has all of it now, and we have agreed that—

The Court: It is perfectly obvious, Mr. Kelley, and 3500 contemplates that situation, Mr. Witt doesn't know nor does the Court know what if anything will be furnished under this 3500 matter. They have a right under the statute after that is furnished, if they desire to look into any subject that is raised, to request a continuance of the examination until they have those facts. What I am trying to find out is whether we should proceed now with another witness and then excuse this witness for cross examination until this matter is all—until the defense is ready to proceed with cross examination or should we proceed with it and then go ahead with it and excuse the other witness?

Mr. Kelley: It is a complicated problem, your Honor. As long as counsel are sitting in Court and examining or we are examining a witness we cannot be looking over any report, we cannot be preparing them, and you cannot be [fol. 601] examining them, and I think the time to consider whether or not there should be a continuance is after we see what material is available to them from these reports which might require some justification for a continuance.

This man lives up in Anchorage, Alaska, and if we can within the realm of fair play get him off this witness stand this afternoon, we would like to do it. If we cannot, we are doing the best we can.

The Court: I am thinking about the Jury just coming down here for an hour or two and going home and waiting around in the interim and so forth. I do not know but what we can proceed with this other testimony. It is nearly noon now. I will recess now until 1:30, and you can produce this matter, and by 1:30 we can decide whether we will go ahead with another witness or what the procedure will be.

Afternoon Session

The Court: Before you proceed I might say to the Jury that you will recall that Government had completed the direct examination of the witness Gardner who was on the stand here before noon. The defense is not ready to proceed with the cross examination, so, the Government will proceed with the direct testimony of the witness now on the stand, and Mr. Gardner's cross examination will be held later. So, you may proceed.

William Mason, a witness called on behalf of the Government, testified:

Direct examination.

By Mr. Crandall:

Q. Would you please state your full name?
A. William Mason.
Q. And where do you reside, Mr. Mason?
A. Butte, Montana.
Q. Would you also tell the Jury and the Court your present employment?
A. I am a miner.
Q. And would you just briefly describe where you are employed?
A. At the moment I am employed by my brother in a small manganese mining operation.
Q. Are you married, Mr. Mason?
A. Yes.
[fol. 602] Q. And do you have any children?
A. Three.
Q. Have you ever been connected with the American labor movement?
A. Yes.
Q. And when did you first become acquainted with the labor movement?
A. In 1934.
Q. And what union was this in?

A. It was the Butte Miners Union No. 1 of the International Union of Mine, Mill & Smelter Workers.

Q. And where is this local located?

A. In Butte, Montana.

Q. Have you ever held office in that local?

A. Yes.

Q. And would you please state when and what offices you have held?

A. I was Walking Delegate for the Butte Miners Union.

Q. And what period was that?

A. In 1936 and 1937. 1939 and '40 I was Financial Secretary of the Union; 1944, President of the Union. I served as editor of the Union's paper and various other capacities from time to time.

Q. Did there ever come a time when you held office in the International Union of Mine-Mill?

A. Yes.

Q. And would you briefly describe or state what offices those were and the periods in which you held those offices?

A. The office I served in was Executive Board member for District No. 1 of the International Union. I served in that office 1941 and '42 and again from 1945 to 1953, inclusive.

Q. And you mentioned that this was District No. 1. Would you tell the ladies and gentlemen of the Jury what that district encompassed, the geographical area?

A. It embraced five states and two Canadian provinces.

Q. What states were those?

A. Montana, Colorado, Wyoming, the two Dakotas and Alberta and Saskatchewan.

Q. Now, you mentioned that you were Executive Board member of District No. 1. Was that an elective office?

A. Yes.

Q. Now, I wish you would briefly explain the organizational composition of the Executive Board.

A. The Executive Board of the International Union of Mine, Mill & Smelter Workers is a body set forth, described in the constitution of the Union. It is composed of an Executive Board member from each of the Union's Districts plus the National Officers of the Union, namely,

the President, the Vice Presidents, and the Secretary-Treasurer.

Q. Approximately how many districts does the Mine-Mill have or did it have during the time you were Executive Board member?

A. Well, at times there were eight districts. At some [fol. 603] time during that period there was an additional district, not geographical, but we referred to it as a district. I would say, by and large, there were eight basic districts in the Union.

Q. Now, you have described the organizational composition of the Executive Board. Would you briefly describe to the Jury the function of the Executive Board?

A. Well, the Executive Board was a body that was charged with administering the Union between conventions, conventions being the highest authority within the Union, the Executive Board being regarded as the body next highest in the administration of the Union, and was supposed to have met regularly to go over the problems and policies and administrative matters of the Union, approve or disapprove of what the President of the Union had done between meetings of the Executive Board. I believe in the main that explains the duties of the Executive Board.

The Court: Do you wish to have that read or something, Mr. Witt?

Mr. Witt: Yes, I missed a word or two at the very beginning.

(The reporter read the beginning of the last question.)

Mr. Witt: I have no objection. I think it should have continuity. I think he means second highest body, second highest to the convention. I think it would be clearer if he agrees to that.

The Court: If counsel wishes, he may clarify that.

Q. You mentioned this was the second highest body. What was the body that was in Mine-Mill that was higher than the Executive Board?

A. I am, of course, talking as to what the constitution intends to be the highest body and the second highest body. I was referring to the convention as the highest body as

intended by the c titution of the Union and the Executive Board as the second highest body as intended by the constitution of the Union.

Q. I would like to go back just a moment. I think you mentioned in enumerating the states in District No. 1 Colorado, is that correct?

A. The State of Colorado is a part of District No. 1.

[fol. 604] Q. And how many states—

The Court: He named the states. He said Montana, Colorado, Wyoming, and the two Dakotas.

Mr. Witt: We do not object to this if counsel wants to go ahead. We do not quite see the relevance. We think it is somewhat a waste of time, but we will see what counsel continues to go into.

Q. Mr. Mason, were you ever a member of the Communist Party?

A. Yes.

Q. And when were you a member of the Communist Party?

A. For some brief period in the early '30's.

Q. Do you know a Mr. Travis?

A. Yes.

Mr. Witt: We will stipulate that Mr. Mason knows Mr. Travis and that the Mr. Travis he knows is the same Mr. Travis that is on trial.

The Court: All right.

Q. When did you first meet Mr. Travis, Mr. Mason?

A. I first saw Mr. Travis and I believe became introduced to him in 1944.

Q. And under what circumstances did you meet him?

A. It was at a convention of the Union in Pittsburgh.

Q. Now, do you have personal knowledge that Mr. Travis was ever an officer of Mine-Mill?

A. Yes.

Q. Would you please tell the ladies and gentlemen of the Jury when and what offices Mr. Travis held in Mine-Mill?

A. Following my meeting with Travis the offices he held to the best of my knowledge were that of Acting Board member for District No. 7.

Q. When was that?

Mr. Witt: Will the witness fix the time as to each of these as he goes along?

The Court: The witness may proceed with his answers and later—

Mr. Witt: I was suggesting, your Honor, that when he makes his answer "Acting Board member" that he fix the time and so on.

[fol. 605] The Court: You can detail what positions he held, and then, if you can fix the time as you go along or later, either one, you may do so.

A. I believe he was Acting Board member sometime in 1945. That could be embracing part of '46.

Mr. Witt: Excuse me, what District? I am sorry to interrupt.

The Court: District 7 I think he said. That's correct, isn't it, Mr. Mason?

The Witness: That's correct.

The Court: Proceed.

A. The next office I believe, the next position was that of Assistant to the President, and that I believe would be in a good part of 1946. He became Vice President of the Union in '47, but part of '47 he because of a vacany in the presidency, he became President. From 1948 including 1948 until the time I left the Union he was in the office of Secretary-Treasurer. There may be some mistake in my answers, but there has been considerable turnover in the offices of the Union, and I may not have this in proper order as to time.

Q. Do you recall the passage by the Congress of the United States of the Act commonly known as the Taft-Hartley Act?

A. Yes, I do.

Q. When approximately was this Act passed?

Mr. Deikman: Objection, your Honor. This is a matter of common knowledge. It has no relevancy to the issues in this trial.

The Court: I think the dates, if it is relevant, could be

stipulated unless it has some connection with fixing a time or something.

Mr. Witt: If your Honor suggests a stipulation, we are prepared to stipulate.

The Court: If anybody knows the date.

[fol. 606] Mr. Witt: I know the date.

The Court: It is a matter of record.

Mr. Witt: We are prepared to stipulate that Taft-Hartley was passed by the Congress and was signed by the President and became effective on June 23, 1947.

The Court: All right.

Q. Immediately following the passage of the Taft-Hartley Act, Mr. Mason, did you as Executive Board member know whether or not Mine-Mill took a position with regard to whether it would or would not comply with the Act?

Mr. Witt: I object to that. The whole problem of compliance is a rather complicated legal problem. This question has as its premise a legal conclusion which at this stage of this trial would not mean very much to the Jury, and besides I do not see the relevance.

The Court: Well, I think the witness may answer. I assume it is some kind of a preliminary question, but I think the question is objectionable on the basis that you say compliance with the Taft-Hartley Act. What provision do you mean of the Taft-Hartley Act?

Mr. Crandall: I think maybe I had better rephrase the question.

The Court: I think you had better reframe the question.

Q. Immediately following the passage of the Taft-Hartley Act as a member of the Executive Board do you have knowledge whether Mine-Mill took a position with regard to complying or signing non-Communist affidavits?

Mr. Witt: I am afraid Mr. Crandall hasn't complied with the Court's suggestion if I understood it.

The Court: No, that I think is right. That limits—the first question was formed a policy with respect to compliance with the Act, and I say it should be pointed up some specific part of the Act, and I think he has done that.

[fol. 607] Mr. Witt: I do not think so.

The Court: On what basis.

Mr. Witt: Well, he hasn't said—the question of compliance, as I said, under Taft-Hartley is a rather complicated technical question legally, and there is no way in which the witness's answer to this question as put by Mr. Crandall would be intelligible to the Jury. Then, we are going to have the problem about cautionary instruction as we did on the first trial about this, your Honor, because we are getting into some pretty deep material.

The Court: No, it seems to me that the question is clear, and I will overrule your objection, and he may answer the question. The Court is assuming that the matter will be connected up some way so as to be entirely relevant here, but I assume it is preliminary.

Mr. Crandall: It is preliminary.

Mr. Witt: I do not press the point, but may I interrogate the witness on voir dire in support of my objection to the pending question?

The Court: With respect to what?

Mr. Witt: With respect to what compliance means as the word is contained in Mr. Crandall's question. I think I could develop it.

The Court: I do not see where there is any ambiguity or anything. He is simply asking him, as I understand the question, if he knows what the policy of this particular union was with respect to complying with the provisions of the Taft-Hartley Act relating to the filing of non-Communist affidavits. That is the question.

Mr. Witt: If this record has been made clear as to what is meant by complying with Taft-Hartley. Mr. Crandall didn't say affidavits in his question.

Mr. Kelley: Yes, he did.

[fol. 608] Mr. Witt: I am sorry, I missed that. It emphasizes my point. Compliance has much more to do than with the affidavit in Taft-Hartley.

The Court: I think it is a preliminary question, and I do not believe there is any reason for interrogating the witness about his complying or whatever you want to call it. He may answer the question.

A. I do.

Q. And what was that position?

Mr. Witt: May we have a continuing objection this line?
The Court: Yes, the objection may continue.

A. The position adopted was that the Union will not comply.

Q. Do you know what Mr. Travis's position as an official with Mine-Mill with regard to compliance—strike that. In connection with this position of Mine-Mill do you know whether or not Mr. Travis as an official of Mine-Mill also took a position in this connection?

Mr. Witt: I object to that on the grounds I have stated in other connections—I do not want to take too much time on it—one, on the ground of remoteness, and, two, on Constitutional grounds in light of the interpretation of Section 9(h) of Taft-Hartley by the Supreme Court in ACA vs. Douds.

The Court: The objection will be overruled, and you may answer.

A. Yes, I do.

Q. Do you have knowledge, Mr. Mason, that at some later time the Mine-Mill changed its position in this connection?

Mr. Deikman: Objection. It calls for a conclusion and opinion on the part of the witness. If some position or attitude on the part of Mine-Mill is relevant to this case, it can be shown by factual situation, what the witness observed, heard or saw, and without having to go into the witness's mind to search for a conclusion or an opinion, and it would become a matter for the Jury to determine as to [fol. 609] what the position of Mine-Mill is at any particular point. Secondly, it seems to me that what the position of Mine-Mill was on anything is not any issue in this case. It is simply whether or not the defendant is guilty of violating Section 1001.

The Court: Well, this man was an executive officer or executive officer on the Executive Board or whatever it is called of the Union which was, as he described it, the second highest governing body, and the question simply asked with respect as to the fact as to what the policy of the Union was with respect to this matter. It calls for no conclusion.

It calls for the fact of what the policy of the Union was, so, the objection will be overruled, and you may answer, Mr. Mason.

CAUTIONARY INSTRUCTION

Mr. Witt: I am sorry, if the Court please, I wasn't sure as to the point at which I should bring this to the Court's attention, but Mr. Crandall is substantially following the interrogation of the witness on direct as was followed by the prosecution in the first trial. I have the transcript of that direct examination here in my hand, and at this very point on the first trial, that is, page 558, we approached the bench and as a result of which there was a bench conference or Chambers conference, it doesn't matter, out of which eventuated an agreement between counsel that at this point a cautionary instruction be given to the Jury. So, at this point we ask—

The Court: What is the cautionary instruction?

Mr. Witt: I have it. Shall we approach the Bench?

The Court: Let me see the transcript.

Mr. Witt: I will show you the transcript. The discussion about the problem begins at page 558, and the cautionary instruction agreed upon by counsel as read by the Court in Chambers appears at pages 561 and 562, and the cautionary instruction itself given to the Jury is at page 563. I am referring your Honor to this volume opened at page 563.

Mr. Crandall: I might mention that the Government has no objection to giving the cautionary instruction at this time along the same lines.

The Court: The part you wish given is what appears on page 563, Mr. Witt?

[fol. 610] Mr. Witt: Yes, sir.

Mr. Kelley: This is a copy of what is in there if it would be of any assistance to the Court.

The Court: I will read at page 563 and a few words that run over on 564. I am going to read it verbatim as it appears in the record of the last trial when (sic) I gather, as counsel have pointed out and seem to agree, that this same question arose and it was agreed by counsel that the Court should advise the Jury, as I am about to advise you, the

transcript reads and the instruction I desire to give you at this time is: "Ladies and gentlemen of the Jury, in connection with the interrogation of the witness who is now on the stand, a matter arose which I discussed with counsel in Chambers and counsel for the Government and for the defendant have agreed I should give you this cautionary instruction at this time. I am sure you appreciate this is agreed upon by all the lawyers to the case.

"The Taft-Hartley Law, insofar as it relates to this case, provides that labor organizations which desire to utilize the facilities of the National Labor Relations Board, that is, which desire to participate in elections conducted by the Board and to file charges of unfair labor practices with the Board, must file certain documents with the Board, and that in addition, each of their officers must file the non-Communist affidavit set out in the law. Compliance or non-compliance with Taft-Hartley by the filing of these documents and affidavits is therefore optional on the part of labor organizations. Therefore, when there is testimony or evidence that Mine-Mill did not comply with Taft-Hartley or testimony or evidence that the defendant was opposed to compliance, this in and of itself does not mean that Mine-Mill or the defendant were thereby violating the law but were merely exercising the option provided by the Taft-Hartley law." You may proceed.

Q. When if ever, Mr. Mason, did this noncompliance policy of Mine-Mill change?

A. The position of the Union on the Taft-Hartley Act was changed by means of a resolution adopted at a meeting of the Executive Board of the Union.

Q. And when was this meeting of the Executive Board held?

A. In July of 1949.

[fol. 611] Q. Now, prior to the adoption of the Executive Board resolution of July, 1949, did you have an occasion to talk with Mr. Travis regarding the Taft-Hartley Act?

A. Yes.

Q. And when approximately or can you approximate the time prior to the adoption of the Act when this conversation took place?

A. Well, the last discussion with Travis concerning the Taft-Hartley Act, the last discussion before the Union's position on the Taft-Hartley Act was changed was at some time before the meeting of the Executive Board at which the position was changed.

Q. Now, would that be a matter of a week or two weeks? I am trying to fix the date in point of time.

A. I believe it was in June.

Q. Where did this discussion take place, Mr. Mason?

A. At the residence, at Travis's residence in Chicago.

Q. And who was present at that meeting?

A. In addition to Travis and myself there was Mrs. Travis in the house.

Q. Did she take part in the conversation?

A. No.

Q. Now, would you relate to the Court and the Jury the substance of this conversation connecting what was said by yourself and what was said by Travis?

Mr. Witt: If the Court please, I rise not to make an objection but just to preserve the record, because we do not know what is coming, but may we have a motion to strike the testimony about this conversation after the witness finishes this line if we think it is irrelevant or improper?

The Court: Yes.

Q. Would you continue?

A. Travis talked of the difficulties the Union was having in organizational campaigns. He said that owing to the fact the Union is not complying with the Taft-Hartley Act that the Union, of course, cannot appear on the ballot in these elections conducted by the National Labor Relations Board which certifies one union or the competing unions as bargaining agencies, "We have been losing some of these elections," he said, and that the people on the staff are quite worried about it, that there is discussions going on within the Party on this whole deal. He said, "We will soon be acting on this matter on the Executive Board."

Q. Now, you used the term in relating the substance of the conversation of the "Party". What did that term mean to you at that time?

A. The Communist Party.

[fol. 612] Mr. Witt: We move to strike the answer not only on the ground of remoteness with respect to which I believe we have a continuing objection but also because this is not evidence of membership in or affiliation with the Communist Party as of December, 1951 and December, 1952.

The Court: The motion will be denied.

Q. Did there come a time in which you talked with Mr. Travis in connection with this same motion or—strike that. Did there come a time when you talked with Mr. Travis regarding the change of policy adopted at the July, 1949, Executive Board meeting?

A. Yes.

Q. Now, could you give us the approximate time that this conversation took place?

A. That conversation was several days following the meeting of the Executive Board at which the position of the Union was changed.

Q. Now, where did the conversation take place, what city?

A. In Denver.

Q. And could you state who was present at this conversation?

A. It was a private conversation between Travis and myself.

Q. Was there any building or location or anything like that that you could point up more particularly the place of the conversation?

A. Well, it was at some one of the number of usual meeting places we had in Denver. I cannot recall which one.

Q. Now, would you please state the substance of this conversation again connecting what was said by yourself and what was said by Mr. Travis?

A. Well, I asked Travis how the changed position of the Union will affect him personally, if it means he would have to drop his office in the Union. He said that that would not be it, that it does mean, however, that he has to resign from the Party and then handed me a typewritten statement and said it was his resignation statement and will be published in the Union's paper. He wanted me to read it. He said, "I would like to have your reaction to it." He said the statement had been cleared with Ben Gold and the Party

people in New York. He wanted my reaction to it and particularly how I think the membership in my District will accept this statement when it comes out in the Union paper.

Q. Was there any further conversation in this same connection at that time, do you recall?

A. Yes.

Q. What other conversation?

A. Well, I glanced through this statement. He asked me what I thought of it. I looked over it, and I said that [fol. 613] under the circumstances I suppose it is the only thing you can do. I asked him if that would be the policy which will be pursued by Communists in other unions, and he said that was pretty much along those lines, that the Party thinks this is the best policy for us in the unions to follow.

Mr. Witt: If Mr. Crandall is done with that incident, I make the same motion to strike that I made with respect to the conversation in Chicago in June.

The Court: The motion will be denied.

Mr. Witt: I make it on the same ground.

(Document marked Government's Exhibit No. 8 for identification.)

Q. Mr. Mason, I show you a document marked for identification Government's Exhibit No. 8, and I ask you to look at page No. 3. Mr. Mason, is that the same statement that Mr. Travis showed you during your conversation that you have just referred to that took place subsequent to the July, 1949, resolution?

A. That is the same content.

OFFER IN EVIDENCE

Mr. Crandall: Your Honor, I offer page three of Government's Exhibit 8, that portion of page three captioned "Travis Statement on Signing Taft-Hartley Affidavit" with the by-line "By Maurice Travis".

The Court: All right. Is there any objection?

Mr. Witt: Yes, we do not raise any question—

Mr. Crandall: I move that the blocked-in portion at the top of the page be eliminated as well as the picture on the right.

The Court: What I am concerned about is, how was this physically handled before? You can't hand that to the Jury and have them recollect what was eliminated or something. How was it handled?

Mr. Kelley: We photostated that part which was ad-
[fol. 614] mitted in evidence, and it bears the same number as the original.

The Court: That is what had better be received in evidence if anything is.

Mr. Kelley: Mr. Witt says there is no objection to this, is that right?

The Court: What identification number does this have?

Mr. Witt: Mr. Crandall stated for the record.

Mr. Crandall: It has the same identification number.

The Court: How are we going to tell them apart?

Mr. Kelley: We substitute a photostatic copy.

Mr. Crandall: We move to substitute for the original the photostatic copy which is marked Government's Exhibit No. 8.

The Court: Is that agreeable to you?

Mr. Witt: I think it is, yes. We have another objection to its admission. We admit the authenticity, however.

The Court: All right.

Mr. Witt: We object to the introduction in evidence of this exhibit, and we move to strike the testimony that the witness has already given with respect to it on the ground that the testimony in this exhibit is not evidence bearing on the charges in this case and cannot constitutionally be evidence bearing on the charges in this case.

The Court: The objection will be overruled, and, of course, this photostatic copy will be the exhibit that is available here for use in the trial, not the paper, the photostat.

Mr. Crandall: That's correct, your Honor.

(Government's Exhibit No. 8 for identification received in evidence.)

[fol. 615] Q. Mr. Mason, I would like to direct your attention to the spring of 1952 and ask you whether or not that at about that time Mine-Mill held an official function.

A. Well, yes, there would have been meetings of the Executive Board of the Union.

Q. Now, do you recall any conversation with Mr. Travis at about that time?

A. Well, there were a number of conversations with Travis at almost every Board meeting.

Q. Could you just point up your present recollection of the first Board meeting?

A. There was one discussion with Travis that I remember.

Q. When did that take place?

A. On the occasion of one of these Executive Board meetings.

Q. And could you just give us the time when this Executive Board meeting took place?

A. I believe this one was the second Board meeting of the year. It would be about March.

Q. Where did the conversation take place, Mr. Mason?

A. At the Union's Headquarters here in Denver.

Q. Who was present at this conversation?

A. There were a number of people at the Headquarters, but the conversation was between Travis and myself.

Q. Would you please relate to the Court and to the Jury the substance of that conversation connecting statements made by yourself and statements made by Mr. Travis?

A. Travis asked me what I thought of the left-wing unions, the expelled unions forming a third federation of labor. I told him that I was opposed to it, that to begin with we had as officers of the Union promised the membership that we would seek to gain admittance for the Union with the American labor movement, seek to return the Union to the Congress of Industrial Organizations, and that we would not undertake any action to further split the labor movement in the country by forming a third federation of labor.

Q. Did he make any further comments?

Motion for Mistrial and Motion to Strike and Rulings Thereon

Mr. Witt: I move to strike that answer, and I make a motion for a mistrial on the same ground that we made it in connection with other testimony, that is, the reference to the left-wing unions in that answer, and the way this

testimony is coming in, again, we say the Jury is bound to be confused and will get to feel that the so-called left-wing unions, whichever they are, are on trial here and not Maurice Travis.

The Court: The motion to strike will be denied, and like-
[fol. 616] wise the motion for a mistrial will be overruled.

A. I said to Travis that such a third federation of labor would because of the nature of the leadership of the expelled unions stick out like a sore thumb on the American labor scene and that would be vulnerable for attacks by corporations, newspapers, and it would be attacked by the other unions in the American labor movement, and that it would be impotent as far as servicing the membership of the Union in the mines, smelters, and refineries.

He said that he goes along pretty much along the same lines. He said that the Soviet delegation in Paris at the World Federation of Trade Unions are throwing their weight around demanding that the American left-wing unions form a third federation and that this has been discussed among the boys in the other unions and that it was left up to him, Travis, to reply to Salon who is one of the heads of the World Federation of Labor Unions in Paris and to tell them that the boys in the expelled unions are not in favor of such a move.

Mr. Witt: I move to strike that answer, and I make a motion for a mistrial. It is impossible for the Jury to understand what that is all about, about a Soviet delegation in Paris. The witness has referred to expelled unions. We objected to the testimony by Eckert about the CIO proceeding against Mine-Mill. We have the same objection to this, and now the objection we think is better founded, because this witness has generalized even more about that matter, and brought in all kinds of testimony and issues which hopelessly confuse the issues in this trial.

Mr. Crandall: Before you rule on that I would like to mention that this line of questioning is not concluded, that it is actually preliminary to further questions.

The Court: I think the motion, both motions just made by Mr. Witt will be denied, and you may proceed.

Mr. Deikman: I would like to state a further ground, your Honor?

The Court: I beg your pardon?

[fol. 617] Mr. Deikman: I would like to state a further ground for that motion to strike and a motion for mistrial, and that is everything this witness has related does not add one thing to this case. If that kind of statement is taken on the part of Mr. Travis as a statement that will incriminate him with respect to issues in this court, it would be a violation, in permitting that evidence it would be a violation of the freedom of speech under the First Amendment, a violation of the right of a citizen to comment upon the issues of his time, and a violation of due process of law.

Mr. Crandall: I think that is premature at this time.

The Court: The motion will be denied. You may proceed.

Q. Mr. Mason, getting back to this conversation that you have just related to the Court and the Jury do you recall any further statement made by Mr. Travis concerning the third federation?

The Court: You mean at this conversation?

Mr. Crandall: At this particular conversation.

Q. Refer to this particular conversation.

A. I recall that asking Travis, as I often did, what was the position of the Party on this matter.

Q. And what did he reply?

A. He said—

Mr. Witt: Before he goes on with the next question I am not sure I caught what the witness said but inserted in that answer was the phrase "as I often did". I move that that be stricken.

The Court: I think it may be disregarded and the rest of it will stand.

Mr. Witt: And I ask that the Jury be instructed to disregard that remark.

The Court: "As I often did" may be disregarded, but the rest of the answer may stand.

Q. And to your query to him what did he say, Mr. Mason?

[fol. 618] A. He said the Party left it up to us and the unions.

Q. Now, I would like to direct your attention to the

year 1953 and ask you whether or not an official function was held by Mine-Mill during the early part of that year.

A. Yes.

Q. Would you please state what that function was?

A. It was a staff conference, a conference of all the elective and appointive personnel of the Union.

Q. When did this staff conference occur and in what city did it occur?

A. It was in the month of March. I don't recall the date, one week in March, and the location was here in Denver at the Albany Hotel.

Q. Now, this is your first reference to a staff conference. Would you please explain to the Court and to the Jury what the nature of this conference was?

A. Well, the elected officers, the employees of the Union, and the several departments of the Union, the field representatives, so-called International Representatives from the various Districts and even some of the office personnel or all of the office personnel were all required to meet for a period of about a week at which various discussions were gone into on various subjects, and the conference was broken into panels, these panels discussed, for example, organizational and political action, and it was a sort of a training school as it were for the people on the payroll of the International Union.

Q. Was Mr. Travis present at this conference?

A. Yes.

Q. Did you have any conversation with Mr. Travis at this conference?

A. Yes.

Q. And do you have any one particular conversation in mind?

A. Yes.

Q. And where did this conversation take place?

A. The one I had in mind took place at the headquarters of the Union.

Q. And who was present at the conversation?

A. There were a number of people at the Headquarters of the Union, but the conversation was between Travis and myself, and at one point another person.

Q. Can you name the other person?

A. It was Herman Clott.

Q. Would you please relate the substance of this conversation connecting it with what was said by each of the individuals you have mentioned?

A. Travis handed me the proposed agenda for this staff [fol. 619] conference, and in glancing through it I noticed that under the subject title of legislative program for the Union that a number of things were listed such as repeal of the McCarran Act.

Mr. Deikman: Objection, your Honor, as to what was listed in any written material. That would be hearsay.

The Court: I think he may proceed. You may continue.

A. There were items such as repeal of the McCarran Act and fight against witch-hunting and a number of items. I asked Travis if we as a union have departed so far from the principle of unionism that we are advocating as officers of the Union that this should be the program of the legislative group for the miners, smelter workers, and people in the refineries and not matters such as improved old-age pension or development of the Missouri River Valley Authority or some of the other things that a labor union should fight for. Travis said that I have a point, and he handed the agenda to one of the people in the Press and Education Department and told them to include these things I had mentioned to him, and some time later when the conversation turned to other things Herman Clott approached with the question of Travis saying that—

Mr. Deikman: Objection as to what Herman Clott said.

The Court: It was in the presence of Mr. Travis, as I understand.

Mr. Deikman: It is not subject to cross examination at this point.

The Court: He can relate any conversation that was had in the presence of the defendant.

Mr. Deikman: If it was a statement the defendant adopted or, if he kept silent it was an admission against interest, but I think in a thing like this that the United States Attorney ought to make an offer of proof, because

it sounds to me as though neither of those instances where it could be admissible has been shown, no foundation has been laid for it.

The Court: As I understand, Mr. Travis was present when this conversation took place, isn't that right?

[fol. 620] Mr. Crandall: Yes.

The Court: If he was, the objection will be overruled.

A. Clott said, "Trav, there is a duplication here. We have got the legislative program here in two places." Travis told him that this thing is dealing with other subjects, that it is all right, that the one deals with some items, the other deals with items of another type. I do not recall just what was said there. I said to Travis, "Things are getting worse by the minute. Even our legislative representative in Washington doesn't know what the legislative program for the miners and smelter workers in this Union should be." Travis said, while I had a point, let's not make too much of it, that these other things too like repeal of the McCarran Act are important, and he said, "When they get us Communists they will be after people like you if we don't get these laws repealed."

Mr. Witt: I move to strike that answer, because it is not evidence under these charges, and this kind of testimony like I think all of this witness's testimony violates the First Amendment and is not evidence because of the First Amendment under the Supreme Court decision in the Douds case.

The Court: The objection will be overruled.

Mr. Witt: While I am on my feet, your Honor, I am sorry, I didn't get clear whether this episode with Clott present was part of the same conversation the witness has already testified about with Travis about the agenda. If it is not, may we have that clarified?

The Court: I gather, I mean, if there is any question counsel better ask whether this is all one conversation.

Q. Now, you mentioned during your recital of the conversation you said later. What did you mean by "later"?

A. Well, I meant that there has been a break in the discussion on the subject.

Q. Now, what was the period of this break?

A. Oh, it would have been an hour or two later or perhaps sometime later in the day, but Mr. Clott approached us with this.

[fol. 621] Mr. Witt: I think, your Honor, your Honor has the same impression I had from the earlier testimony, that it was part of the same conversation with Travis with Clott joining it later, but, if it is clear to your Honor, I am satisfied now that he says there was a break. He talked to Travis about the proposed agenda, and then they separated, and sometime later he was talking to Travis and then Clott joined the conversation. Is that the way your Honor understands it?

The Court: I guess that is the sequence.

Mr. Crandall: That's right.

Mr. Deikman: I move to strike the entire conversation relating to the agenda. What is the possible conceivable relevance to the trial in progress now? What has this conversation regarding internal business transactions in the Union, whether certain things should be on the agenda or not, what possible relevance does that have?

The Court: I think, if you would carefully read the question, you would probably see the significance. The Court does not desire to argue the matter or stress any particular portion of the answer, because the weight to be given the testimony is for the Jury, but the objection will be overruled.

Q. Just to clear up one point, Mr. Mason, did this conversation after the break, did this take place in that same location as the previous one?

A. Yes.

Mr. Witt: I am sorry to press the point, your Honor, perhaps it is clear, but I would like to follow it so we can be prepared for cross examination. Did both of these conversations, the one with Travis alone and the one later with Travis and Clott both take place in the forenoon or both in the afternoon or both in the evening or one in the forenoon and one in the afternoon? I am sorry to press it, your Honor.

The Court: I think you can develop that.

Q. To clear the record, Mr. Mason, during the first conversation that you mentioned between yourself and Travis was Mr. Clott present at that time?

[fol. 622] The Court: No, well, you can ask him that, but I gather he already testified he wasn't. But what counsel is inquiring about is what time of the day did these conversations take place.

Mr. Crandall: I think the record is clear on that, but I will clear it up.

Q. The first conversation between you and Mr. Travis on this specific date or time that you have related, when did that take place?

A. It would be sometime during either recess of a session of the Executive Board or a break for lunch period or just before we convened in the morning. I can't recall, but I do recall there was some time elapsed between the conversation between Travis and myself and then later Clott's approach.

Mr. Witt: I think the witness may have misspoken himself. I could be wrong. I think the record could be more clear.

Mr. Crandall: I didn't get it.

Mr. Witt: May I suggest to Mr. Crandall off the record what I think the situation is?

The Court: All right.

Q. Just to clear the record on this point, did this conversation take place at a meeting of the Executive Board or was it at—or just tell where the conversation took place.

A. The conversation took place at the headquarters of the Union.

Mr. Witt: I am sorry, may I suggest that Mr. Crandall make it more clear? I think I am right now.

The Court: I thought it was—I may be wrong along with the rest of them—I thought this was a conversation during the period when they were having the staff meeting.

Mr. Witt: That is my point. He testified the staff meet-

ing took place at the Albany Hotel and the one with Travis alone and the one with Travis and Clott took place at the Headquarters of the Union, to use the witness's language, so, I was right when the witness referred to meetings of [fol. 623] the Executive Board, and that is what I was suggesting that Mr. Crandall clarify.

The Court: You may proceed.

Q. I would like to direct your attention, Mr. Mason, to the period in approximately July, 1953. Do you have any recollection of having a conversation with Mr. Travis at that time?

A. Yes.

Q. And would you please state where this conversation took place?

A. The conversation I have in mind took place, there was a telephone conversation.

Q. Who initiated the telephone conversation?

A. I did.

Q. And when approximately did this telephone conversation take place?

A. Late in July, I cannot recall the dates, it may be possible that it could have been early in August too. As I recall, it was late in July.

Q. That is 1953?

A. Yes.

Q. Now, would you relate to the Court and to the Jury the substance of this conversation connecting it with what was said by Mr. Travis and what was said by yourself?

A. I told Travis to call off the Party watchdogs or there would be trouble. He wanted to know what is wrong. I told him that he knew damn well what was wrong, that we were in the midst of extreme bargaining difficulties and that he and his people chose this time to start distorting the facts involved in the Montana bargaining and blackening our name before the membership elsewhere throughout the Union, that, if he doesn't call off this dirty attack, that there is going to be trouble. I was quite angry. I told him that I had been invited to testify against him and that I declined to do so but the way I feel now that I should have said yes to the invitation to testify against him. He said

that, "You would not do that, would you? We have always been able to work things out together. Don't do anything. I will come up to Montana, I will fly up, and we will sit down and talk this thing over. We have been able to talk things over before. Don't do anything until I get up there." In substance that is the conversation.

Mr. Deikman: I move to strike that conversation, your Honor, because it mainly was a speech on the part of Mr. Mason in which approximately three words were spoken by the defendant in a 15-minute speech by Mr. Mason which I assume he is reducing here, and, furthermore, it could [fol. 624] not possibly be evidence against Mr. Travis on the charges of 1951 and '52, membership or affiliation in the Communist Party, and it violates, again, the principles of the First Amendment if this is to be used as evidence in a trial of this nature.

The Court: Well, as I understand, it was testimony as to a conversation between this witness and the defendant. Of course, if it is relevant, naturally, that would make it admissible and remove it from any of the objections you have just indicated, and I think its relevancy appears on the face of it. You may draw one inference, and somebody else may draw another, but the question of inferences to be drawn is a question, of course, for the Jury. The objection will be overruled.

Q. As a result of this telephone conversation did you have a subsequent conversation with Mr. Travis?

A. Yes.

Q. And in point of time—

Mr. Witt: Excuse me, your Honor. Since Mr. Crandall is going into another topic, were you planning to recess about this time?

(A recess was taken.)

WILLIAM MASON, resumed the stand, and testified as follows:

Direct examination (continued).

By Mr. Crandall:

Q. Just prior to the recess I believe you had just finished with the conversation, telephone conversation or the subject of a telephone conversation with Mr. Travis that took place in late July or early August, 1953. Now, I would like to ask you as a result of that telephone conversation did you have a subsequent conversation with Mr. Travis?

A. Yes.

Q. And when did this conversation take place?

A. A few days after the telephone conversation.

Q. Where did it take place?

A. In Butte.

Q. Now, just for the record and clearing this point up am I correct in stating that that would be in the early part of August, 1953?

A. Yes.

[fol. 625] Mr. Witt: I didn't object to it, but may I suggest that counsel not lead the witness? All of these are important details, and we should get the testimony of the witness.

The Court: I think the question is very leading and fixed the date.

Mr. Crandall: I was clearing this up for the jury because we have had a recess.

The Court: Has there been testimony fixing the date?

Mr. Crandall: I stand corrected.

Mr. Witt: I don't think anybody at the prosecution table should talk out loud on this, but that is not important. It will take time to clear up what the witness said as to when the telephone conversation was and when the subsequent meeting was.

Mr. Crandall: I think it is cleared up now.

The Court: You are the one that fixed the dates, and the question counsel is raising has this witness ever fixed the date?

Mr. Crandall: I am sorry.

Q. Will you state when the telephone conversation took place, Mr. Mason?

A. I already stated that to the best of my recollection it was late in July. It is entirely possible it may have been very early in August. I don't know the date.

Q. Then the conversation that resulted from this conversation when did that take place?

A. I testified that was a few days following the telephone conversation, and, again, I don't recall the date or the number of days. I would place it within a week.

Q. Who was present at this subsequent conversation?

A. During the early part of the meeting with Travis John Clark, the President of the Union, was present. However, not during the conversation with Travis on matters involved, bearing on the telephone call.

Q. What city did this conversation take place?

[fol. 626] The Court: Fix the place.

Mr. Witt: The witness said Butte, but can we have where in Butte?

Q. Where in Butte did this conversation with Travis take place?

A. The part in which John Clark participated was at the Grand Hotel, but the conversation, private conversation between Travis and myself took place at the Hotel Leggat in the bar.

Q. Would you relate to the Court and to the jury the substance of the conversation that took place at the Leggat Bar and connect it as to what you said and what Mr. Travis said?

A. Travis said that, "Now that we have gotten rid of Clark let's down to business. What is the situation?" I told him that he knew very well what the situation was and that in all my experience in bargaining we have the most difficult year of bargaining with Anaconda and that I considered it very dirty on his part and on the part of his people to attack us in the midst of our bargaining difficulties with the Anaconda Company, that we understand it for what it is, that it is an effort by him and his people to undermine the leadership of District No. 1 and to place

it in a bad light before the membership of the entire union, we know that this is so because we are opposed to the Party, the Communist control in this union, and he said he had been misinformed as to the facts in bargaining and that it was Clark who gave him the wrong information, that he is sorry if the facts have been distorted by some of the staff people in the union.

I said that I do not believe that Clark gave him the wrong information, that Clark, himself is involved in the Montana bargaining and would as a result not want the Union misinformed as to issues involved, that I think his commissars, Travis's commissars on his staff, on my staff are the ones that gave him the wrong information.

Mr. Deikman: I move to strike all that.

The Court: Has he finished his answer?

Mr. Crandall: No, he hasn't finished the answer.

[fol. 627] Mr. Deikman: I understood he finished it.

A. He said, Travis said, now that the facts are clear I should not worry, there will be no more attacks but as to the other things that I talked about and we have talked about before that he would like to take these matters up, my position on things with Al Pezzati and the boys in Denver. He asked if I would come to Denver a day or two in advance of a wage policy conference that had been previously scheduled, he asked if I would sit down with him and the boys and talk things over, that we may be able to work things out, we did before, we have always been able to get together.

I told him that I doubt whether anything would be accomplished in such a meeting, that I am talking to him as the leader of the Party for he is in the Union and that what has happened so far has made some of our people in Montana among them the men who built the Union very angry at the situation. He asked me if, he said, "How would you people in Montana feel if I stepped out of the office of Secretary-Treasurer and somebody like Al Pezzati got into the office?" I told him that we have nothing against him personally, that we are opposed to him only as a representative of the Party, and in my own opinion, if Al Pezzati got into the office, the position of the Communist

Party would be enhanced within the Union because Pezzati was a fresher man and not as well known in the Union. I said to him that we have never opposed him on a personal basis, that, as a matter of fact, we can say that in all the other things we have been able to get along with him very nicely in the question of allocation of organizers and allocation of funds and regular trade union policies but we are opposed to Communist control of the Union. He said that he was very happy that we didn't have anything against him personally.

Q. Now, as a result of this—

Mr. Deikman: If this conversation is to stand as being relevant, then this man is going to be tried for the speeches that this man made.

The Court: Point out why it is not relevant.

Mr. Deikman: Because there is nothing in the way of admissions against interest in the way of anything that would identify Travis as a member of the Communist [fol. 628] Party, and even in that period which is remote from the time that we are talking about in this indictment, nothing that he said would so much as hint that he was a member of the Communist Party but only that this man believed him to be a member of the Communist Party. Therefore, the only evidence we have here is a tirade on the part of this witness.

The Court: I don't agree with that, and there is nothing in the record to support that. He is testifying to what the conversation was. This is no voluntary statement. He is testifying to what was said in this particular conversation.

Mr. Deikman: I will make it very short. We make our objection on the same ground we have made previous objections and also that, if we were to cross-examine this man on the basis of this conversation, all the irrelevant material that has been put in on the basis of this supposed conversation, we will be here endlessly, because he has gone into the entire history of the Union. He said that the Butte Local built the Union which does not happen to be our interpretation of the facts, but we would have to go into that kind of history if we cross-examine him.

The Court: He is stating I again reiterate simply the conversation and the statements he made and that Mr. Travis made, and it is for the Jury to infer with respect to Mr. Travis's association with the Communist Party which is one of the primary issues in this case. The witness has testified to the conversation in which he directly charged that the difficulty in his area was due to the fact that the Communist people whom he charged Mr. Travis with being his people or something to that effect were interfering with the Union operations and requesting some relief from that angle, and the jury have heard what the witness said to Mr. Travis, and they have heard Mr. Travis's reply, and it is for the jury to ascertain what inferences can be drawn from the testimony, so, the objection will be overruled.

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. Witt: I respectfully move for a mistrial on the ground that your Honor hasn't correctly summarized the witness's testimony, and in view of the fact that I think that some of your Honor's remarks are highly prejudicial and improper I make this motion for mistrial.

[fol. 629] The Court: Well, the motion will be denied. I will tell the jury that under the law, as I told you at the beginning of the case, you are the sole judges of the credibility of the witnesses and the weight to be given the evidence in the case, and you should pay no attention to the Court's appraisal of the facts in the case, and, if there is anything the Court has said along that line, you should disregard it entirely in arriving at your verdict. Counsel have repeatedly been making objections to the irrelevancy of the testimony. The Court has been refraining from commenting on the possible inferences that might be drawn, but the objections continued, and the Court felt it proper that the Court point out why it was relevant, but you are not to pay any attention to the appraisal of the evidence by the Court or be bound in any way by the Court's view of the evidence, because you are the sole judges of the credibility of the witnesses and the weight to be given the evidence.

Q. In this conversation that you have just related you made reference to invitation to meet with Mr. Travis in Denver. Did you at some later time meet with him concerning the subject matter that you have just discussed?

A. Yes, I do, yes, I did.

Q. And when did that meeting with him take place?

A. Well, it was immediately after the Wage Policy Conference in Denver, perhaps a session or two of the Executive Board.

Q. Where did this wage policy conference occur?

A. Here in Denver.

Q. When did it occur?

A. I am not at the moment able to recall the date.

Q. Can you give us the month of the year?

A. Well, it would be a matter of some days following the conversation in Butte. I can't place the date at the moment.

Mr. Witt: I am not pressing it, your Honor, but can he place the month? I am suggesting to Mr. Crandall whether he can place the month. I assume it is in 1953.

The Court: I think that is what he is trying to do. If the witness can place the month, he may do so. You may inquire, Mr. Crandall.

Q. You mentioned that the conversation at the Leggat [fol. 630] Bar took place in August. Can you give us the month when this occurred to the best of your recollection?

A. Yes.

Mr. Witt: I don't think Mr. Crandall is accurately representing the record. I gather that Mr. Kelley agrees with me.

Mr. Kelley: Not at all.

Mr. Witt: I am sorry. I don't think the record will show—I could be mistaken—I don't think the record will show that he placed the conversation in the Hotel Leggat Bar in Butte in August.

Mr. Crandall: I think the record will show that.

Mr. Witt: I won't press it. What the record shows the record shows. May I press the suggestion that the witness be asked to fix the month of the conversation in Denver?

Q. I will pose this question to you, Mr. Mason: In reference to the conversation that took place in the Leggat Bar how long after this did this conversation take place?

A. Well, I said, I testified that it is a matter of some days, as far as the month is concerned it would be August, of course, 1953.

Q. Now, where did this conversation take place in Denver if you have knowledge of such fact?

A. Part of it at the Sears Hotel and most of it at a restaurant on Broadway here in Denver.

Q. Who was present at the conversation?

The Court: There are two conversations?

Q. Who was present at the first conversation at the Sears Hotel?

Mr. Witt: If anyone.

Q. If anyone.

Mr. Witt: When he says that Mr. Crandall means anybody else.

A. Travis and I.

[fol. 631] Q. Now, would you relate to the Court and to the jury the substance of the conversation that took place at the Sears Hotel connecting it with what Mr. Travis said and what you said?

A. It was one conversation but part of it was in one place, part of it in another.

Q. Then, am I correct to say that this is a continuing conversation?

A. Yes.

Q. Would you then relate—

The Court: What does he mean by that? Do they continually talk as they walk or what? You had better treat it as two conversations unless it is a continual conversation.

Mr. Crandall: I thought I did, your Honor.

Q. Would you please explain the circumstances surrounding this conversation to clear up as to whether it was more than one conversation?

A. It was one conversation, but the discussions started at the Sears Hotel continuing en route to the restaurant where we had dinner. The bulk of the discussion, as a matter of fact, all of the discussion that bears on the subjects discussed over the telephone and in the Hotel Leggat Bar, but the conversation took place in the restaurant on Broadway.

Q. Now, would you relate to the Court and to the jury the substance of the conversation that took place in the restaurant as it related to the Leggat Bar conversation connecting it with what Mr. Travis said and what you said?

A. This was a very lengthy conversation. I told Travis that in my opinion there is a serious crisis developing in the Union, that the opposition to the Party line is increasing, that it exists not only in Montana but throughout the Union. I told him that here is the leader of the Party forces should come forth, take some action to educate the membership that there is room in the Union's leadership for non-Communists as well as Communists, that in filling vacancies and appointing the international representatives, miners and smelter workers and refineries workers from the rank and file will be chosen and not Party liners from outside the Union, that the policy of the official organ of the International Union, the paper, which has been constantly criticizing and attacking the foreign policies of the United States and not once criticizing the position of Soviet Union, that that should be changed, that the paper must reflect more the thinking, the aspirations and aims of the rank and file membership, [fol. 632] that the constitutional violations should be ceased and that the Union be operated under the constitution, a number of other points I listed which I told him are essential in order to avoid a crisis within this Union.

I said to him that it is a shame and a bad reflection on him and on his people that there is now a new opposition in the Union to Communist control after on two previous occasions such anti-Communist opposition had withdrawn as individuals and as local unions from the organization, and according to everything that is right the Union should now be free of any opposition, free of any dissen-

sion over the question but the opposition exists throughout the Union.

Travis told me that these things that I am outlining are in direct opposition to the Party and that I am not being realistic if I think that he, Travis can change the policies of the paper. He said that he had had a talk with Pezatti, Stern, and the boys about the things we discussed in Butte, about my position and they are not in favor of making any deals, that he knows I have been fighting the Party, and that Al and the boys know it too. I told him that I was not here to make any deals, that I am not concerned for my personal position within the Union, that I have always been elected and as a matter of fact I was perhaps the only one originally elected by the workers in the Union but that I would not like to go through a new term of two years sitting on the Board unless some of these things are changed, that as far as I am concerned I understand his attitude to be that he does not want any unity and that to me that means a fight, and, if he wants to fight it out, it is all right by me, the fight against Communist control will have to be undertaken in this Union sooner or later anyhow.

He said that Pezatti and the boys feel that there should be no compromises and that he, Travis, is one of those in the Party who thinks that there have been too many compromises already, that I do not grasp the new situation, that the Soviet Union is becoming stronger, and that the position of the Communist in the Union has been stronger, we have been able to he said repulse the raid and hold this union and other unions. I told him that in facing the problems of the Union the Union became expelled from the labor movement, and in fighting off the raid on the Union's membership he had people like my brother Joe and myself and others who worked to build this Union long [fol. 633] before he, Travis, was in the Union, and that in a fight which I suppose will have to take place between us and you people in control of the Union we oldtimers will choose the ground on which we will fight, we won't fight on the issues that they select, we are going to expose the Party control of this organization and throw the thing in the open.

He said that in such a fight, and, as I admit myself, he has the machine and the paper, that these people are seasoned fighters, and that he had an opportunity to watch my boys in action, he will not get much help from them, the only one qualified to help them in such a fight would be my brother and they understand that he has some personal problems now and he will not be of much help to them. He said that he does not think that I am the kind of a person that would split the Union. I said that I certainly do not like to see a split in this organization which has already been split a number of times over the Communist issues, but that I consider it an insult to the old-timers in the Union that I represent and to myself and to my dignity to be forced into a position where I have to negotiate with him, Travis, and the Party people in control of this Union for merely the restoration of the rights and privileges of members and local unions and of the democratic processes which our predecessors in the Union have established and which we, the members, have enjoyed down through the years and which were taken away from us, and that as far as I am concerned I am disposed to fight especially in view of his attitude and the attitude as he reported of Pezatti and his boys.

He said, "You and Joe were invited to get into the Party, had you done so, you would be sitting high in the councils of this organization with us, but you failed to do so."

Q. Do you recall anything else?

A. At the moment I don't recall. It was a very lengthy conversation, and I know that much more was said.

Mr. Witt: If the Court please, we move to strike that answer, and there are so many grounds plus several grounds we have discussed in Chambers outside of the hearing of the jury that I am wondering—

The Court: You can renew the motion to strike in [fol. 634] Chambers rather than to have a recess now. The motion will be held under advisement until you can argue further.

Mr. Witt: Can we go in Chambers?

Mr. Crandall: We will be finished very shortly.

Mr. Witt: May we go in chambers as soon as Mr.

Crandall is done with his direct examination which I gather he will be in just a minute?

The Court: Yes.

Q. During this same year that you have just related this conversation was there an election of the Executive Board members?

Mr. Witt: I object to that. There is no relevance in this case.

Mr. Crandall: I merely want to establish that he was on the Executive Board at that time.

Mr. Witt: We will stipulate if Mr. Crandall thinks it is important. Mason was elected Executive Board member in 1953.

Q. And did you serve out your term, Mr. Mason?

A. No.

Q. And what was the period for which you were elected?

A. I was elected for the year 1954 and '55.

Q. And subsequent to this conversation with Mr. Travis do you recall any further private conversations?

A. None private. They were all public fights.

Mr. Crandall: We pass the witness.

The Court: Are you through with your direct examination?

Mr. Kelley: That completes the direct examination, your Honor.

Mr. Witt: May I interrupt? I want to be sure that we get our objection on the record—our motion on the record as to Section 3500.

[fol. 635] The Court: Make your motion now.